

AN ACT

To amend sections 103.144, 103.145, 103.146, 122.15, 145.01, 149.07, 166.03, 183.02, 317.33, 742.01, 1309.528, 1333.11, 3307.01, 3309.01, 3313.37, 3313.375, 3318.31, 3353.07, 3353.11, 3770.02, 3770.03, 3770.06, 5111.34, 5111.872, 5123.043, 5123.046, 5123.048, 5123.049, 5123.0411, 5126.01, 5126.02, 5126.021, 5126.033, 5126.035, 5126.036, 5126.042, 5126.046, 5126.05, 5126.054, 5126.055, 5126.06, 5126.14, 5126.15, 5126.17, 5126.18, 5126.19, 5126.221, 5126.357, 5505.01, 5705.44, 5709.12, 5709.121, 5709.17, 5709.40, 5709.411, 5709.43, 5709.73, 5709.74, 5709.75, 5709.77, 5709.78, 5709.79, 5709.80, 5709.81, 5725.14, 5725.24, 5725.25, 5725.26, 5733.056, 5733.06, 5733.0610, 5733.09, 5733.11, 5733.98, 5739.01, 5741.01, 5743.05, 5747.058, 5747.13, 5747.98, 5923.05, and 5923.051; to amend, for the purpose of adopting a new section number as indicated in parentheses, section 5126.056 (5126.057); to enact new section 5126.056 and sections 122.171, 122.60, 122.601, 122.602, 122.603, 122.604, 122.605, 307.6910, 5733.45, 5739.012, and 5741.011; to repeal section 103.147 of the Revised Code and to amend Section 11 of Am. Sub. S.B. 50 of the 121st General Assembly, to amend Section 3 of Am. Sub. H.B. 440 of the 121st General Assembly, as subsequently amended, to amend Section 5.02 of Sub. H.B. 73 of the 124th General Assembly, to amend Section 41 of Am. Sub. H.B. 94 of the 124th General Assembly, as subsequently amended, to amend Sections 41.15, 45, 63.25, 74.01, 74.02, 94.11,

104, and 140 of Am. Sub. H.B. 94 of the 124th General Assembly, to amend Sections 41.10 and 63.09 of Am. Sub. H.B. 94 of the 124th General Assembly, as subsequently amended, to amend Section 10 of Am. Sub. S.B. 192 of the 123rd General Assembly, to amend Section 9 of Am. Sub. S.B. 192 of the 123rd General Assembly, as subsequently amended, and to repeal Section 11 of Sub. H.B. 73 of the 124th General Assembly, to revise provisions of Am. Sub. H.B. 94 of the 124th General Assembly regarding services for persons with mental retardation or other developmental disabilities, to revise the law governing membership of county boards of mental retardation and developmental disabilities, to grant property tax exemptions for Edison program grantees, to modify Local Government Fund and Tobacco Master Settlement Agreement Fund distributions, to increase the cigarette wholesaler's markup, to expand the uses of the Corporate and Uniform Commercial Code Filing Fund, to revise provisions of the TANF Housing Program within the Department of Development, to authorize transfers from the Budget Stabilization Fund to the General Revenue Fund, to clarify the application of the "in lieu of other tax" exemption regarding certain dealers in intangibles, to modify the "deposits only" apportionment fraction for certain financial institutions, to establish the Capital Access Program in the Department of Development, to create a nonrefundable credit against the corporate franchise and personal income taxes for job retention, to exempt temporarily certain new high-technology companies from the net worth calculation of the corporate franchise tax, to establish the Rural Development

Initiative Fund in the state treasury, and to permit the disbursement of grants from that fund in conjunction with loans from the Rural Industrial Park Loan Program, to extend the sunset of the Rural Industrial Park Loan Program to July 1, 2007, to permit political subdivisions in economically distressed areas to employ tax increment financing throughout a designated incentive district, to modify other tax increment financing provisions, to revise the criteria for the award and use of certain TANF Funds for Appalachia, to permit a county to enter into an agreement with a political subdivision authorizing the county to receive payments of certain revenue in the county treasury that are due a political subdivision as a credit against amounts otherwise owed to the county, to require the Department of Education in fiscal years 2002 and 2003 only to pay a subsidy to certain community schools in which at least half of the total number of students enrolled are severe behaviorally handicapped students, to specify control over Ohio Government Telecommunications and associated funds, to require the State Lottery Commission to enter into a multistate lottery if the Governor so directs, modifies the liability of county recorders, to increase the membership of the Nursing Facility Reimbursement Study Council, to create a committee to study the impact of gambling, to permit certain nursing homes to apply for Medicare certification of certain beds, to revise the requirement for independent healthcare actuarial reviews of mandated benefits, to reduce the cigarette tax stump discount, to eliminate a study of road and bridge funding mandates, to make corrections, to repeal section 307.6910 of the Revised Code effective July 1, 2007, and to make appropriations.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 103.144, 103.145, 103.146, 122.15, 145.01, 149.07, 166.03, 183.02, 317.33, 742.01, 1309.528, 1333.11, 3307.01, 3309.01, 3313.37, 3313.375, 3318.31, 3353.07, 3353.11, 3770.02, 3770.03, 3770.06, 5111.34, 5111.872, 5123.043, 5123.046, 5123.048, 5123.049, 5123.0411, 5126.01, 5126.02, 5126.021, 5126.033, 5126.035, 5126.036, 5126.042, 5126.046, 5126.05, 5126.054, 5126.055, 5126.06, 5126.14, 5126.15, 5126.17, 5126.18, 5126.19, 5126.221, 5126.357, 5505.01, 5705.44, 5709.12, 5709.121, 5709.17, 5709.40, 5709.411, 5709.43, 5709.73, 5709.74, 5709.75, 5709.77, 5709.78, 5709.79, 5709.80, 5709.81, 5725.14, 5725.24, 5725.25, 5725.26, 5733.056, 5733.06, 5733.0610, 5733.09, 5733.11, 5733.98, 5739.01, 5741.01, 5743.05, 5747.058, 5747.13, 5747.98, 5923.05, and 5923.051 be amended, section 5126.056 (5126.057) be amended for the purpose of adopting a new section number as indicated in parentheses, and new section 5126.056 and sections 122.171, 122.60, 122.601, 122.602, 122.603, 122.604, 122.605, 307.6910, 5733.45, 5739.012, and 5741.011 of the Revised Code be enacted to read as follows:

Sec. 103.144. As used in sections 103.144 to ~~103.147~~ 103.146 of the Revised Code:

(A) "Mandated benefit" means the following, when considered in the context of a sickness and accident insurance policy or a health insuring corporation policy, contract, or agreement:

(1) Any required coverage for a specific medical or health-related service, treatment, medication, or practice;

(2) Any required coverage for the services of specific health care providers;

(3) Any requirement that an insurer or health insuring corporation offer coverage to specific individuals or groups;

(4) Any requirement that an insurer or health insuring corporation offer specific medical or health-related services, treatments, medications, or practices to existing insureds or enrollees;

(5) Any required expansion of, or addition to, existing coverage;

(6) Any mandated reimbursement amount to specific health care providers.

(B) "Mandated benefit" does not include any required coverage or offer of coverage, any required expansion of, or addition to, existing coverage, or any mandated reimbursement amount to specific providers, as described in division (A) of this section, within the context of any public health benefits

arrangement, including but not limited to, the coverage of beneficiaries enrolled in Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended, pursuant to a medicare risk contract or medicare cost contract, or to the coverage of beneficiaries enrolled in Title XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended, known as the medical assistance program or medicaid, provided by the Ohio department of job and family services under Chapter 5111. of the Revised Code.

Sec. 103.145. (A) ~~Whenever any bill receives~~ The chairperson of a second hearing in a standing committee in the of either house of the general assembly ~~in which the bill originated may, at any time, request the director of the legislative budget officer shall service commission to review the any bill that is assigned to the chairperson's committee in order to determine whether the bill includes a mandated benefit. The director shall review the bill and notify the chairperson of the director's determination.~~ If the ~~legislative budget officer~~ director determines that the bill includes a mandated benefit, the ~~legislative budget officer shall~~ presiding officer of the house that is considering the bill may request the director to arrange for the performance of an independent healthcare actuarial review of the mandated benefit. In making this arrangement, the legislative budget officer director shall retain one or more independent actuaries on a consulting basis to determine the financial impact of the mandated benefit in accordance with section 103.146 of the Revised Code. Each actuary retained shall be a member in good standing of the American academy of actuaries. The ~~legislative budget officer~~ director shall assist the actuary or actuaries in obtaining any information needed.

No later than sixty days after receiving the second hearing presiding officer's request to arrange for the performance of the bill actuarial review, the ~~legislative budget officer~~ director shall submit the findings of the actuarial review to the chairperson of the committee to which the bill is assigned and to the ranking minority member of that committee.

(B) To assist the actuary or actuaries in obtaining information needed to perform the healthcare actuarial review, the legislative ~~budget office of the legislative~~ service commission may request any department, division, institution, board, commission, authority, bureau, or other instrumentality or officer of the state, a county, a municipal corporation, a township, a school district, or other governmental entity of the state to provide any information the ~~legislative budget office~~ commission requires for purposes of the review.

An instrumentality, officer, or entity shall comply with a request as soon as reasonably possible after receiving it. The ~~legislative budget office~~

commission shall specify the manner of compliance, and the period of time for compliance, in its request.

Sec. 103.146. In performing an independent healthcare actuarial review of a mandated benefit, the actuary or actuaries retained by the director of the legislative budget—officer service commission shall consult with professionals knowledgeable in matters related to the performance of an actuarial review of a mandated benefit and shall consider the results of any professionally acceptable controlled trial and any other relevant research specifically centered around the benefit. The actuary or actuaries shall determine the extent to which:

(A) The mandated benefit will increase or decrease the administrative expenses of insurance companies and health insuring corporations;

(B) The mandated benefit will increase or decrease premiums;

(C) Small employers, medium-sized employers, large employers, and, if applicable, the state and political subdivisions of the state, will be financially impacted;

(D) The mandated benefit will increase or decrease the number of insured individuals in this state; and

(E) The mandated benefit will impact the total cost and quality of health care, including any potential cost savings that may be realized.

Sec. 122.15. As used in sections 122.15 to 122.154 of the Revised Code:

(A) "Edison center" means a cooperative research and development facility that receives funding through the Thomas Alva Edison grant program under division (C) of section 122.33 of the Revised Code.

(B) "Ohio entity" means any corporation, limited liability company, or unincorporated business organization, including a general or limited partnership, that has its principal place of business located in this state and has at least fifty per cent of its gross assets and fifty per cent of its employees located in this state. If a corporation, limited liability company, or unincorporated business organization is a member of an affiliated group, the gross assets and the number of employees of all of the members of that affiliated group, wherever those assets and employees are located, shall be included for the purpose of determining the percentage of the corporation's, company's, or organization's gross assets and employees that are located in this state.

(C) "Qualified trade or business" means any trade or business that primarily involves research and development, technology transfer, bio-technology, information technology, or the application of new technology developed through research and development or acquired through technology transfer. "Qualified trade or business" does not include

any of the following:

(1) Any trade or business involving the performance of services in the field of law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, or brokerage services, or any trade or business where the principal asset of the trade or business is the reputation or skill of one or more of its employees;

(2) Any banking, insurance, financing, leasing, rental, investing, or similar business;

(3) Any farming business, including the business of raising or harvesting trees;

(4) Any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 611, 613, or 613A of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 611, 613, or 613A;

(5) Any business of operating a hotel, motel, restaurant, or similar business;

(6) Any trade or business involving a hospital, a private office of a licensed health care professional, a group practice of licensed health care professionals, or a nursing home. As used in division (C)(6) of this section:

(a) "Nursing home" has the same meaning as in section 3721.50 of the Revised Code.

(b) "Hospital" has the same meaning as in section 3727.01 of the Revised Code.

(D) "Information technology" means the branch of technology devoted to the study and application of data and the processing thereof; the automatic acquisition, storage, manipulation or transformation, management, movement, control, display, switching, interchange, transmission or reception of data, and the development or use of hardware, software, firmware, and procedures associated with this processing. Information technology includes matters concerned with the furtherance of computer science and technology, design, development, installation and implementation of information systems and applications that in turn will be licensed or sold to a specific target market. Information technology does not include the creation of a distribution method for existing products and services.

(E) "Insider" means an individual who owns, controls, or holds power to vote five per cent or more of the outstanding securities of a business. For purposes of determining whether an investor is an insider, the percentage of voting power in the Ohio entity held by a person related to the investor shall be added to the investor's percentage of voting power in the same Ohio

entity, if the investor claimed the person related to the investor as a dependent or a spouse on the investor's federal income tax return for the previous tax year.

~~(E)~~(F) "Related to" means being the spouse, parent, child, or sibling of an individual.

~~(F)~~(G) "Research and development" means designing, creating, or formulating new or enhanced products, equipment, or processes, and conducting scientific or technological inquiry and experimentation in the physical sciences with the goal of increasing scientific knowledge that may reveal the bases for new or enhanced products, equipment, or processes.

~~(G)~~(H) "State tax liability" means any tax liability incurred under division (D) of section 5707.03, section 5727.24, 5727.38, or 5747.02, or Chapter 5733. of the Revised Code.

~~(H)~~(I) "Technology transfer" means the transfer of technology from one sector of the economy to another, including the transfer of military technology to civilian applications, civilian technology to military applications, or technology from public or private research laboratories to military or civilian applications.

~~(I)~~(J) "Affiliated group" means two or more persons related in such a way that one of the persons owns or controls the business operations of another of those persons. In the case of a corporation issuing capital stock, one corporation owns or controls the business operations of another corporation if it owns more than fifty per cent of the other corporation's capital stock with voting rights. In the case of a limited liability company, one person owns or controls the business operations of the company if that person's membership interest, as defined in section 1705.01 of the Revised Code, is greater than fifty per cent of combined membership interest of all persons owning such interests in the company. In the case of an unincorporated business organization, one person owns or controls the business operations of the organization if, under the articles of organization or other instrument governing the affairs of the organization, that person has a beneficial interest in the organization's profits, surpluses, losses, or other distributions greater than fifty per cent of the combined beneficial interests of all persons having such an interest in the organization.

~~(J)~~(K) "Money" means United States currency, or a check, draft, or cashier's check for United States currency, payable on demand and drawn on a bank.

Sec. 122.171. (A) As used in this section:

hinery, or equipment, but does not include any of the following:

(a) Payments made for the acquisition of personal property through operating leases;

(b) Project costs paid before January 1, 2002, or after December 31, 2006;

(c) Payments made to a related member as defined in section 5733.042 of the Revised Code.

(2) "Eligible business" means a business with Ohio operations that:

(a) Employed an average of at least one thousand employees in full-time employment positions at a project site during each of the twelve months preceding the application for a tax credit under this section; and

(b) On or after January 1, 2002, has made payments for the capital investment project of at least two hundred million dollars at the project site during a period of three consecutive calendar years that includes the calendar year that includes a day of the taxpayer's taxable year with respect to which the credit is granted;

(c) Has had a capital investment project reviewed and approved by the tax credit authority as provided in divisions (C), (D), and (E) of this section.

(3) "Full-time employment position" means a position of employment for consideration for at least thirty-five hours a week, or any other standard of service generally accepted by custom as full-time employment within the industry, that has been filled for at least one hundred eighty days immediately preceding the filing of an application under this section, and for at least one hundred eighty days during each taxable year with respect to which the credit is granted.

(4) "Project site" means an integrated complex, as specified by the tax credit authority under this section, within a five-mile radius where a taxpayer in this state is primarily operating as a manufacturer as defined in section 5739.011 of the Revised Code.

(B) The tax credit authority created under section 122.17 of the Revised Code may grant tax credits under this section for the purpose of fostering job retention in this state. Upon application by an eligible business and upon consideration of the recommendation of the director of budget and management, tax commissioner, and director of development under division (C) of this section, the tax credit authority may grant to an eligible business a nonrefundable credit against the tax imposed by section 5733.06 or 5747.02 of the Revised Code for a period up to ten taxable years. The credit shall be in an amount not exceeding seventy-five per cent of the Ohio income tax withheld from the employees of the eligible business occupying full-time employment positions at the project site during the calendar year

that includes the last day of such business' taxable year with respect to which the credit is granted. The amount of the credit shall not be based on the Ohio income tax withheld from full-time employees for a calendar year prior to the calendar year in which the two hundred million dollar minimum investment referred to in division (A)(2)(b) of this section is completed. The credit shall be claimed only for the taxable years specified in the eligible business' agreement with the tax credit authority under division (E) of this section, but in no event shall the credit be claimed for a taxable year terminating before the date specified in the agreement.

Any unused portion of a tax credit may be carried forward for not more than three additional years after the year for which the credit is granted.

(C) A taxpayer who proposes a capital investment project to retain jobs in this state may apply to the tax credit authority to enter into an agreement for a tax credit under this section. The director of development shall prescribe the form of the application. After receipt of an application, the authority shall forward copies of the application to the director of budget and management, the tax commissioner, and the director of development, each of whom shall review the application to determine the economic impact the proposed project would have on the state and the affected political subdivisions and shall submit a summary of their determinations and recommendations to the authority. The authority shall make no agreements under this section after June 30, 2007.

(D) Upon review of the determinations and recommendations described in division (C) of this section, the tax credit authority may enter into an agreement with the taxpayer for a credit under this section if it determines all of the following:

(1) The taxpayer's capital investment project will result in the retention of full-time employment positions in this state.

(2) The taxpayer is economically sound and has the ability to complete the proposed capital investment project.

(3) The taxpayer intends to and has the ability to maintain operations at the project site for at least twice the term of the credit.

(4) Receiving the credit is a major factor in the taxpayer's decision to begin, continue with, or complete the project.

(5) The political subdivisions in which the project is located have agreed to provide substantial financial support to the project.

(E) An agreement under this section shall include all of the following:

(1) A detailed description of the project that is the subject of the agreement, including the amount of the investment, the period over which the investment has been or is being made, and the number of full-time

employment positions at the project site;

(2) The method of calculating the number of full-time employment positions as specified in division (A)(3) of this section;

(3) The term and percentage of the tax credit, and the first year for which the credit may be claimed;

(4) A requirement that the taxpayer maintain operations at the project site for at least twice the number of years as the term of the credit;

(5) A requirement that the taxpayer retain a specified number of full-time employment positions at the project site and within this state for the term of the credit, including a requirement that the taxpayer continue to employ at least one thousand employees in full-time employment positions at the project site during the entire term of any agreement, subject to division (E)(7) of this section;

(6) A requirement that the taxpayer annually report to the director of development the number of full-time employment positions subject to the credit, the amount of tax withheld from employees in those positions, the amount of the payments made for the capital investment project, and any other information the director needs to perform the director's duties under this section;

(7) A requirement that the director of development annually review the annual reports of the taxpayer to verify the information reported under division (E)(6) of this section and compliance with the agreement. Upon verification, the director shall issue a certificate to the taxpayer stating that the information has been verified and identifying the amount of the credit for the taxable year. The director shall not issue a certificate for any year in which the total number of filled full-time employment positions for each day of the calendar year divided by three hundred sixty-five is less than ninety per cent of the full-time employment positions specified in division (E)(5) of this section. In determining the number of full-time employment positions, no position shall be counted that is filled by an employee who is included in the calculation of a tax credit under section 122.17 of the Revised Code.

(8)(a) A provision requiring that the taxpayer, except as otherwise provided in division (E)(8)(b) of this section, shall not relocate employment positions from elsewhere in this state to the project site that is the subject of the agreement for the lesser of five years from the date the agreement is entered into or the number of years the taxpayer is entitled to claim the credit.

(b) The taxpayer may relocate employment positions from elsewhere in this state to the project site that is the subject of the agreement if the director of development determines both of the following:

(i) That the site from which the employment positions would be relocated is inadequate to meet market and industry conditions, expansion plans, consolidation plans, or other business considerations affecting the taxpayer;

(ii) That the legislative authority of the county, township, or municipal corporation from which the employment positions would be relocated has been notified of the relocation.

For purposes of this section, the movement of an employment position from one political subdivision to another political subdivision shall be considered a relocation of an employment position unless the movement is confined to the project site. The transfer of an individual employee from one political subdivision to another political subdivision shall not be considered a relocation of an employment position as long as the individual's employment position in the first political subdivision is refilled.

(9) A waiver by the taxpayer of any limitations periods relating to assessments or adjustments resulting from the taxpayer's failure to comply with the agreement.

(F) If a taxpayer fails to meet or comply with any condition or requirement set forth in a tax credit agreement, the tax credit authority may amend the agreement to reduce the percentage or term of the credit. The reduction of the percentage or term shall take effect in the taxable year immediately following the taxable year in which the authority amends the agreement. If the taxpayer relocates employment positions in violation of the provision required under division (D)(8)(a) of this section, the taxpayer shall not claim the tax credit under section 5733.0610 of the Revised Code for any tax years following the calendar year in which the relocation occurs, or shall not claim the tax credit under section 5747.058 of the Revised Code for the taxable year in which the relocation occurs and any subsequent taxable years.

sioner shall preserve the confidentiality of the statement or other information.

(H) A taxpayer claiming a tax credit under this section shall submit to the tax commissioner a copy of the director of development's certificate of verification under division (E)(7) of this section for the taxable year. However, failure to submit a copy of the certificate does not invalidate a claim for a credit.

(I) For the purposes of this section, a taxpayer may include a partnership, a corporation that has made an election under subchapter S of chapter one of subtitle A of the Internal Revenue Code, or any other business entity through which income flows as a distributive share to its owners. A tax credit received under this section by a partnership, S-corporation, or other such business entity shall be apportioned among the persons to whom the income or profit of the partnership, S-corporation, or other entity is distributed, in the same proportions as those in which the income or profit is distributed.

(J) If the director of development determines that a taxpayer who has received a tax credit under this section is not complying with the requirement under division (E)(4) of this section or reduces the number of employees agreed to under division (E)(5) of this section by more than ten per cent, the director shall notify the tax credit authority of the noncompliance. After receiving such a notice, and after giving the taxpayer an opportunity to explain the noncompliance, the authority may terminate the agreement and require the taxpayer to refund to the state all or a portion of the credit claimed in previous years.

In determining the portion of the credit to be refunded to this state, the authority shall consider the effect of market conditions on the taxpayer's project and whether the taxpayer continues to maintain other operations in this state. After making the determination, the authority shall certify the amount to be refunded to the tax commissioner. The commissioner shall make an assessment for that amount against the taxpayer under Chapter 5733. or 5747. of the Revised Code. The time limitations on assessments under Chapter 5733. or 5747. of the Revised Code do not apply to an assessment under this division, but the commissioner shall make the assessment within one year after the date the authority certifies to the commissioner the amount to be refunded.

(K) The director of development, after consultation with the tax commissioner and in accordance with Chapter 119. of the Revised Code, shall adopt rules necessary to implement this section. The rules may provide for recipients of tax credits under this section to be charged fees to cover

administrative costs of the tax credit program. At the time the director gives public notice under division (A) of section 119.03 of the Revised Code of the adoption of the rules, the director shall submit copies of the proposed rules to the chairpersons of the standing committees on economic development in the senate and the house of representatives.

(L) On or before the thirty-first day of March of each year, the director of development shall submit a report to the governor, the president of the senate, and the speaker of the house of representatives on the tax credit program under this section. The report shall include information on the number of agreements that were entered into under this section during the preceding calendar year, a description of the project that is the subject of each such agreement, and an update on the status of projects under agreements entered into before the preceding calendar year.

Sec. 122.60. As used in sections 122.60 to 122.605 of the Revised Code:

(A) "Capital access loan" means a loan made by a participating financial institution to an eligible business that may be secured by a deposit of money from the fund into the participating financial institution's program reserve account.

(B) "Department" means the department of development.

(C) "Eligible business" means a for-profit business entity, or a nonprofit entity, that had total annual sales in its most recently completed fiscal year of less than ten million dollars and that has a principal place of for-profit business or nonprofit entity activity within the state, the operation of which, alone or in conjunction with other facilities, will create new jobs or preserve existing jobs and employment opportunities and will improve the economic welfare of the people of the state. As used in this division, "new jobs" does not include existing jobs transferred from another facility within the state, and "existing jobs" means only existing jobs at facilities within the same municipal corporation or township in which the project, activity, or enterprise that is the subject of a capital access loan is located.

(D) "Financial institution" means any bank, trust company, savings bank, or savings and loan association that is chartered by and has a significant presence in the state, or any national bank, federal savings and loan association, or federal savings bank that has a significant presence in the state.

(E) "Fund" means the capital access loan program fund.

(F) "Participating financial institution" means a financial institution that has a valid, current participation agreement with the department.

(G) "Participation agreement" means the agreement between a financial institution and the department under which a financial institution may

participate in the program.

(H) "Passive real estate ownership" means the ownership of real estate for the sole purpose of deriving income from it by speculation, trade, or rental.

(I) "Program" means the capital access loan program created under section 122.602 of the Revised Code.

(J) "Program reserve account" means a dedicated account at each participating financial institution that is the property of the state and may be used by the participating financial institution only for the purpose of recovering a claim under section 122.604 of the Revised Code arising from a default on a loan made by the participating financial institution under the program.

Sec. 122.601. There is hereby created in the state treasury the capital access loan program fund. The fund shall consist of money deposited into it from the facilities establishment fund pursuant to section 166.03 of the Revised Code and all money deposited into it pursuant to section 122.602 of the Revised Code. The total amount of money deposited into the fund from the facilities establishment fund shall not exceed three million dollars during any particular fiscal year of the department.

The department shall disburse money from the fund only to pay the operating costs of the program, including the administrative costs incurred by the department in connection with the program, and only in keeping with the purposes specified in sections 122.60 to 122.605 of the Revised Code.

Sec. 122.602. (A) There is hereby created in the department of development the capital access loan program to assist participating financial institutions in making program loans to eligible businesses that face barriers in accessing working capital and obtaining fixed asset financing. In administering the program, the director of development may do any of the following:

(1) Receive and accept grants, gifts, and contributions of money, property, labor, and other things of value to be held, used, and applied only for the purpose for which the grants, gifts, and contributions are made, from individuals, private and public corporations, the United States or any agency of the United States, the state or any agency of the state, or any political subdivision of the state;

(2) Agree to repay any contribution of money or return any property contributed or the value of that property at the times, in the amounts, and on the terms and conditions, excluding the payment of interest, that the director consents to at the time a contribution is made; and evidence obligations by notes, bonds, or other written instruments;

(3) Adopt rules under Chapter 119. of the Revised Code to carry out the purposes of the program specified in sections 122.60 to 122.605 of the Revised Code;

(4) Engage in all other acts, and enter into contracts and execute all instruments, necessary or appropriate to carry out the purposes specified in sections 122.60 to 122.605 of the Revised Code.

(B) The director shall determine the eligibility of a financial institution to participate in the program and may set a limit on the number of financial institutions that may participate in the program.

(C) To be considered eligible by the director to participate in the program, a financial institution shall enter into a participation agreement with the department that sets out the terms and conditions under which the department will deposit moneys from the fund into the financial institution's program reserve account, specifies the criteria for loan qualification under the program, and contains any additional terms the director considers necessary.

(D) After receiving the certification required under division (C) of section 122.603 of the Revised Code, the director may disburse moneys from the fund to a participating financial institution for deposit in its program reserve account if the director determines that the capital access loan involved meets all of the following criteria:

(1) It will be made to an eligible business.

(2) It will be used by the eligible business for a project, activity, or enterprise that fosters economic development.

(3) It will not be made in order to enroll in the program prior debt that is not covered under the program and that is owed or was previously owed by an eligible business to the financial institution.

(4) It will not be utilized for a project or development related to the on-site construction or purchase of residential housing.

(5) It will not be used to finance passive real estate ownership.

(6) It conforms to the requirements of divisions (E), (F), (G), (H), and (I) of this section, and to the rules adopted by the director under division (A)(3) of this section.

(E) The director shall not approve a capital access loan to an eligible business that exceeds two hundred fifty thousand dollars for working capital or five hundred thousand dollars for the purchase of fixed assets. An eligible business may apply for the maximum amount of both working capital and the purchase of fixed assets in the same capital access loan.

(F) A financial institution may apply to the director for the approval of a capital access loan to any business that is owned or operated by a person

that has previously defaulted under any state financial assistance program.

(G) Eligible businesses that apply for a capital access loan shall comply with section 9.66 of the Revised Code.

(H) A financial institution may apply to the director for the approval of a capital access loan that refinances a nonprogram loan made by another financial institution.

(I) The director shall not approve a capital access loan that refinances a nonprogram loan made by the same financial institution, unless the amount of the refinanced loan exceeds the existing debt, in which case only the amount exceeding the existing debt is eligible for a loan under the program.

(J) The director shall not approve any capital access loan made after June 30, 2007, or enter into a participation agreement with any financial institution after that date.

Sec. 122.603. (A)(1) Upon approval by the director of development and after entering into a participation agreement with the department of development, a participating financial institution making a capital access loan shall establish a program reserve account. The account shall be an interest-bearing account and shall contain only moneys deposited into it under the program and the interest payable on the moneys in the account.

(2) All interest payable on the moneys in the program reserve account shall be added to the moneys and held as an additional loss reserve. The director may require that a portion or all of the accrued interest so held in the account be released to the department. If the director causes a release of accrued interest, the director shall deposit the released amount into the fund. The director shall not require the release of that accrued interest more than twice in a fiscal year.

(B) When a participating financial institution makes a capital access loan, it shall require the eligible business to pay to the participating financial institution a fee in an amount that is not less than one and one-half per cent, and not more than three per cent, of the principal amount of the loan. The participating financial institution shall deposit the fee into its program reserve account, and it also shall deposit into the account an amount of its own funds equal to the amount of the fee. The participating financial institution may recover from the eligible business all or part of the amount that the participating financial institution is required to deposit into the account under this division in any manner agreed to by the participating financial institution and the eligible business.

(C) For each capital access loan made by a participating financial institution, the participating financial institution shall certify to the director, within a period specified by the director, that the participating financial

institution has made the loan. The certification shall include the amount of the loan, the amount of the fee received from the eligible business, the amount of its own funds that the participating financial institution deposited into its program reserve account to reflect that fee, and any other information specified by the director.

(D) On receipt of a certification made under division (C) of this section and subject to section 122.602 of the Revised Code, the director shall disburse to the participating financial institution from the fund an amount equal to ten per cent of the principal amount of the particular capital access loan for deposit into the participating financial institution's program reserve account. The disbursement of moneys from the fund to a participating financial institution does not require approval from the controlling board.

(E) If the amount in a program reserve account exceeds an amount equal to thirty-three per cent of a participating financial institution's outstanding capital access loans, the department may cause the withdrawal of the excess amount and the deposit of the withdrawn amount into the fund.

(F)(1) The department may cause the withdrawal of the total amount in a participating financial institution's program reserve account if any of the following applies:

(a) The financial institution is no longer eligible to participate in the program.

(b) The participation agreement expires without renewal by the department or the financial institution.

(c) The financial institution has no outstanding capital access loans.

(d) The financial institution has not made a capital access loan within the preceding twenty-four months.

(2) If the department causes a withdrawal under division (F)(1) of this section, the department shall deposit the withdrawn amount into the fund.

Sec. 122.604. (A) If a participating financial institution determines that a portion or all of a capital access loan is uncollectible, it may submit a claim to the department of development for approval of the release of moneys from its program reserve account.

(B) The claim may include the amount of principal plus accrued interest owed. The amount of principal included in the claim may not exceed the principal amount covered by the program. The amount of accrued interest included in the claim may not exceed the accrued interest attributable to the covered principal amount.

determinations on similar nonprogram loans.

(D) If the participating financial institution files two or more claims at the same time or approximately the same time and there are insufficient funds in its program reserve account at that time to cover the entire amount of the claims, the participating financial institution may specify an order of priority in which the department shall approve the release of funds from the account in relation to the claims.

(E) If subsequent to the payment of a claim, a participating financial institution recovers from an eligible business any amount covered by the paid claim, the participating financial institution shall promptly deposit the amount recovered into its program reserve account, less any reasonable expenses incurred.

Sec. 122.605. Each participating financial institution shall submit an annual report to the department of development on or before the thirty-first day of March of each year. The report shall include or be accompanied by all of the following:

(A) Information regarding the participating financial institution's outstanding capital access loans, its capital access loan losses, and other related matters that the department considers appropriate;

(B) A statement of the total amount of the participating financial institution's capital access loans for which the department has made disbursements from the fund under the program;

(C) A copy of the participating financial institution's most recent financial statement.

Sec. 145.01. As used in this chapter:

(A) "Public employee" means:

(1) Any person holding an office, not elective, under the state or any county, township, municipal corporation, park district, conservancy district, sanitary district, health district, metropolitan housing authority, state retirement board, Ohio historical society, public library, county law library, union cemetery, joint hospital, institutional commissary, state university, or board, bureau, commission, council, committee, authority, or administrative body as the same are, or have been, created by action of the general assembly or by the legislative authority of any of the units of local government named in division (A)(1) of this section, or employed and paid in whole or in part by the state or any of the authorities named in division (A)(1) of this section in any capacity not covered by section 742.01, 3307.01, 3309.01, or 5505.01 of the Revised Code.

(2) A person who is a member of the public employees retirement system and who continues to perform the same or similar duties under the

direction of a contractor who has contracted to take over what before the date of the contract was a publicly operated function. The governmental unit with which the contract has been made shall be deemed the employer for the purposes of administering this chapter.

(3) Any person who is an employee of a public employer, notwithstanding that the person's compensation for that employment is derived from funds of a person or entity other than the employer. Credit for such service shall be included as total service credit, provided that the employee makes the payments required by this chapter, and the employer makes the payments required by sections 145.48 and 145.51 of the Revised Code.

(4) A person who elects in accordance with section 145.015 of the Revised Code to remain a contributing member of the public employees retirement system.

In all cases of doubt, the public employees retirement board shall determine whether any person is a public employee, and its decision is final.

(B) "Member" means any public employee, other than a public employee excluded or exempted from membership in the retirement system by section 145.03, 145.031, 145.032, 145.033, 145.034, 145.035, or 145.38 of the Revised Code. "Member" includes a PERS retirant who becomes a member under division (C) of section 145.38 of the Revised Code. "Member" also includes a disability benefit recipient.

(C) "Head of the department" means the elective or appointive head of the several executive, judicial, and administrative departments, institutions, boards, and commissions of the state and local government as the same are created and defined by the laws of this state or, in case of a charter government, by that charter.

(D) "Employer" or "public employer" means the state or any county, township, municipal corporation, park district, conservancy district, sanitary district, health district, metropolitan housing authority, state retirement board, Ohio historical society, public library, county law library, union cemetery, joint hospital, institutional commissary, state medical college, state university, or board, bureau, commission, council, committee, authority, or administrative body as the same are, or have been, created by action of the general assembly or by the legislative authority of any of the units of local government named in this division not covered by section 742.01, 3307.01, 3309.01, or 5505.01 of the Revised Code. In addition, "employer" means the employer of any public employee.

(E) "Prior service" means all service as a public employee rendered before January 1, 1935, and all service as an employee of any employer who

comes within the state teachers retirement system or of the school employees retirement system or of any other retirement system established under the laws of this state rendered prior to January 1, 1935, provided that if the employee claiming the service was employed in any capacity covered by that other system after that other system was established, credit for the service may be allowed by the public employees retirement system only when the employee has made payment, to be computed on the salary earned from the date of appointment to the date membership was established in the public employees retirement system, at the rate in effect at the time of payment, and the employer has made payment of the corresponding full liability as provided by section 145.44 of the Revised Code. "Prior service" also means all service credited for active duty with the armed forces of the United States as provided in section 145.30 of the Revised Code.

If an employee who has been granted prior service credit by the public employees retirement system for service rendered prior to January 1, 1935, as an employee of a board of education establishes, before retirement, one year or more of contributing service in the state teachers retirement system or school employees retirement system, then the prior service ceases to be the liability of this system.

If the board determines that a position of any member in any calendar year prior to January 1, 1935, was a part-time position, the board shall determine what fractional part of a year's credit shall be allowed by the following formula:

(1) When the member has been either elected or appointed to an office the term of which was two or more years and for which an annual salary is established, the fractional part of the year's credit shall be computed as follows:

First, when the member's annual salary is one thousand dollars or less, the service credit for each such calendar year shall be forty per cent of a year.

Second, for each full one hundred dollars of annual salary above one thousand dollars, the member's service credit for each such calendar year shall be increased by two and one-half per cent.

(2) When the member is paid on a per diem basis, the service credit for any single year of the service shall be determined by using the number of days of service for which the compensation was received in any such year as a numerator and using two hundred fifty days as a denominator.

(3) When the member is paid on an hourly basis, the service credit for any single year of the service shall be determined by using the number of hours of service for which the compensation was received in any such year

as a numerator and using two thousand hours as a denominator.

(F) "Contributor" means any person who has an account in the employees' savings fund created by section 145.23 of the Revised Code. When used in the sections listed in division (B) of section 145.82 of the Revised Code, "contributor" includes any person participating in a plan established under section 145.81 of the Revised Code.

(G) "Beneficiary" or "beneficiaries" means the estate or a person or persons who, as the result of the death of a member, contributor, or retirant, qualify for or are receiving some right or benefit under this chapter.

(H)(1) "Total service credit," except as provided in section 145.37 of the Revised Code, means all service credited to a member of the retirement system since last becoming a member, including restored service credit as provided by section 145.31 of the Revised Code; credit purchased under sections 145.293 and 145.299 of the Revised Code; all the member's prior service credit; all the member's military service credit computed as provided in this chapter; all service credit established pursuant to section 145.297 of the Revised Code; and any other service credited under this chapter. In addition, "total service credit" includes any period, not in excess of three years, during which a member was out of service and receiving benefits under Chapters 4121. and 4123. of the Revised Code. For the exclusive purpose of satisfying the service credit requirement and of determining eligibility for benefits under sections 145.32, 145.33, 145.331, 145.35, 145.36, and 145.361 of the Revised Code, "five or more years of total service credit" means sixty or more calendar months of contributing service in this system.

(2) "One and one-half years of contributing service credit," as used in division (B) of section 145.45 of the Revised Code, also means eighteen or more calendar months of employment by a municipal corporation that formerly operated its own retirement plan for its employees or a part of its employees, provided that all employees of that municipal retirement plan who have eighteen or more months of such employment, upon establishing membership in the public employees retirement system, shall make a payment of the contributions they would have paid had they been members of this system for the eighteen months of employment preceding the date membership was established. When that payment has been made by all such employee members, a corresponding payment shall be paid into the employers' accumulation fund by that municipal corporation as the employer of the employees.

(3) Where a member also is a member of the state teachers retirement system or the school employees retirement system, or both, except in cases

of retirement on a combined basis pursuant to section 145.37 of the Revised Code or as provided in section 145.383 of the Revised Code, service credit for any period shall be credited on the basis of the ratio that contributions to the public employees retirement system bear to total contributions in all state retirement systems.

(4) Not more than one year of credit may be given for any period of twelve months.

(5) "Ohio service credit" means credit for service that was rendered to the state or any of its political subdivisions or any employer.

(I) "Regular interest" means interest at any rates for the respective funds and accounts as the public employees retirement board may determine from time to time.

(J) "Accumulated contributions" means the sum of all amounts credited to a contributor's individual account in the employees' savings fund together with any interest credited to the contributor's account under section 145.471 or 145.472 of the Revised Code.

(K)(1) "Final average salary" means the quotient obtained by dividing by three the sum of the three full calendar years of contributing service in which the member's earnable salary was highest, except that if the member has a partial year of contributing service in the year the member's employment terminates and the member's earnable salary for the partial year is higher than for any comparable period in the three years, the member's earnable salary for the partial year shall be substituted for the member's earnable salary for the comparable period during the three years in which the member's earnable salary was lowest.

(2) If a member has less than three years of contributing service, the member's final average salary shall be the member's total earnable salary divided by the total number of years, including any fraction of a year, of the member's contributing service.

(3) For the purpose of calculating benefits payable to a member qualifying for service credit under division (Z) of this section, "final average salary" means the total earnable salary on which contributions were made divided by the total number of years during which contributions were made, including any fraction of a year. If contributions were made for less than twelve months, "final average salary" means the member's total earnable salary.

(L) "Annuity" means payments for life derived from contributions made by a contributor and paid from the annuity and pension reserve fund as provided in this chapter. All annuities shall be paid in twelve equal monthly installments.

(M) "Annuity reserve" means the present value, computed upon the basis of the mortality and other tables adopted by the board, of all payments to be made on account of any annuity, or benefit in lieu of any annuity, granted to a retirant as provided in this chapter.

(N)(1) "Disability retirement" means retirement as provided in section 145.36 of the Revised Code.

(2) "Disability allowance" means an allowance paid on account of disability under section 145.361 of the Revised Code.

(3) "Disability benefit" means a benefit paid as disability retirement under section 145.36 of the Revised Code, as a disability allowance under section 145.361 of the Revised Code, or as a disability benefit under section 145.37 of the Revised Code.

(4) "Disability benefit recipient" means a member who is receiving a disability benefit.

(O) "Age and service retirement" means retirement as provided in sections 145.32, 145.33, 145.331, 145.34, 145.37, and 145.46 of the Revised Code.

(P) "Pensions" means annual payments for life derived from contributions made by the employer that at the time of retirement are credited into the annuity and pension reserve fund from the employers' accumulation fund and paid from the annuity and pension reserve fund as provided in this chapter. All pensions shall be paid in twelve equal monthly installments.

(Q) "Retirement allowance" means the pension plus that portion of the benefit derived from contributions made by the member.

(R)(1) Except as otherwise provided in division (R) of this section, "earnable salary" means all salary, wages, and other earnings paid to a contributor by reason of employment in a position covered by the retirement system. The salary, wages, and other earnings shall be determined prior to determination of the amount required to be contributed to the employees' savings fund under section 145.47 of the Revised Code and without regard to whether any of the salary, wages, or other earnings are treated as deferred income for federal income tax purposes. "Earnable salary" includes the following:

(a) Payments made by the employer in lieu of salary, wages, or other earnings for sick leave, personal leave, or vacation used by the contributor;

(b) Payments made by the employer for the conversion of sick leave, personal leave, and vacation leave accrued, but not used if the payment is made during the year in which the leave is accrued, except that payments made pursuant to section 124.383 or 124.386 of the Revised Code are not

earnable salary;

(c) Allowances paid by the employer for full maintenance, consisting of housing, laundry, and meals, as certified to the retirement board by the employer or the head of the department that employs the contributor;

(d) Fees and commissions paid under section 507.09 of the Revised Code;

(e) Payments that are made under a disability leave program sponsored by the employer and for which the employer is required by section 145.296 of the Revised Code to make periodic employer and employee contributions;

(f) Amounts included pursuant to divisions (K)(3) and (Y) of this section.

(2) "Earnable salary" does not include any of the following:

(a) Fees and commissions, other than those paid under section 507.09 of the Revised Code, paid as sole compensation for personal services and fees and commissions for special services over and above services for which the contributor receives a salary;

(b) Amounts paid by the employer to provide life insurance, sickness, accident, endowment, health, medical, hospital, dental, or surgical coverage, or other insurance for the contributor or the contributor's family, or amounts paid by the employer to the contributor in lieu of providing the insurance;

(c) Incidental benefits, including lodging, food, laundry, parking, or services furnished by the employer, or use of the employer's property or equipment, or amounts paid by the employer to the contributor in lieu of providing the incidental benefits;

(d) Reimbursement for job-related expenses authorized by the employer, including moving and travel expenses and expenses related to professional development;

(e) Payments for accrued but unused sick leave, personal leave, or vacation that are made at any time other than in the year in which the sick leave, personal leave, or vacation was accrued;

(f) Payments made to or on behalf of a contributor that are in excess of the annual compensation that may be taken into account by the retirement system under division (a)(17) of section 401 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 401(a)(17), as amended;

(g) Payments made under division (B), (C), or (E) of section 5923.05 of the Revised Code, Section 4 of Substitute Senate Bill No. 3 of the 119th general assembly, ~~or~~ Section 3 of Amended Substitute Senate Bill No. 164 of the 124th general assembly, or Amended Substitute House Bill No. 405 of the 124th general assembly;

(h) Anything of value received by the contributor that is based on or attributable to retirement or an agreement to retire, except that payments made on or before January 1, 1989, that are based on or attributable to an agreement to retire shall be included in earnable salary if both of the following apply:

(i) The payments are made in accordance with contract provisions that were in effect prior to January 1, 1986;

(ii) The employer pays the retirement system an amount specified by the retirement board equal to the additional liability resulting from the payments.

(3) The retirement board shall determine by rule whether any compensation not enumerated in division (R) of this section is earnable salary, and its decision shall be final.

(S) "Pension reserve" means the present value, computed upon the basis of the mortality and other tables adopted by the board, of all payments to be made on account of any retirement allowance or benefit in lieu of any retirement allowance, granted to a member or beneficiary under this chapter.

(T)(1) "Contributing service" means all service credited to a member of the system since January 1, 1935, for which contributions are made as required by sections 145.47, 145.48, and 145.483 of the Revised Code. In any year subsequent to 1934, credit for any service shall be allowed by the following formula:

(a) For each month for which the member's earnable salary is two hundred fifty dollars or more, allow one month's credit.

(b) For each month for which the member's earnable salary is less than two hundred fifty dollars, allow a fraction of a month's credit. The numerator of this fraction shall be the earnable salary during the month, and the denominator shall be two hundred fifty dollars, except that if the member's annual earnable salary is less than six hundred dollars, the member's credit shall not be reduced below twenty per cent of a year for a calendar year of employment during which the member worked each month. Division (T)(1)(b) of this section shall not reduce any credit earned before January 1, 1985.

(2) Notwithstanding division (T)(1) of this section, an elected official who prior to January 1, 1980, was granted a full year of credit for each year of service as an elected official shall be considered to have earned a full year of credit for each year of service regardless of whether the service was full-time or part-time. The public employees retirement board has no authority to reduce the credit.

(U) "State retirement board" means the public employees retirement

board, the school employees retirement board, or the state teachers retirement board.

(V) "Retirant" means any former member who retires and is receiving a monthly allowance as provided in sections 145.32, 145.33, 145.331, 145.34, and 145.46 of the Revised Code.

(W) "Employer contribution" means the amount paid by an employer as determined under section 145.48 of the Revised Code.

(X) "Public service terminates" means the last day for which a public employee is compensated for services performed for an employer or the date of the employee's death, whichever occurs first.

(Y) When a member has been elected or appointed to an office, the term of which is two or more years, for which an annual salary is established, and in the event that the salary of the office is increased and the member is denied the additional salary by reason of any constitutional provision prohibiting an increase in salary during a term of office, the member may elect to have the amount of the member's contributions calculated upon the basis of the increased salary for the office. At the member's request, the board shall compute the total additional amount the member would have contributed, or the amount by which each of the member's contributions would have increased, had the member received the increased salary for the office the member holds. If the member elects to have the amount by which the member's contribution would have increased withheld from the member's salary, the member shall notify the employer, and the employer shall make the withholding and transmit it to the retirement system. A member who has not elected to have that amount withheld may elect at any time to make a payment to the retirement system equal to the additional amount the member's contribution would have increased, plus interest on that contribution, compounded annually at a rate established by the board and computed from the date on which the last contribution would have been withheld from the member's salary to the date of payment. A member may make a payment for part of the period for which the increased contribution was not withheld, in which case the interest shall be computed from the date the last contribution would have been withheld for the period for which the payment is made. Upon the payment of the increased contributions as provided in this division, the increased annual salary as provided by law for the office for the period for which the member paid increased contributions thereon shall be used in determining the member's earnable salary for the purpose of computing the member's final average salary.

(Z) "Five years of service credit," for the exclusive purpose of satisfying the service credit requirements and of determining eligibility for benefits

under section 145.33 of the Revised Code, means employment covered under this chapter or under a former retirement plan operated, recognized, or endorsed by the employer prior to coverage under this chapter or under a combination of the coverage.

(AA) "Deputy sheriff" means any person who is commissioned and employed as a full-time peace officer by the sheriff of any county, and has been so employed since on or before December 31, 1965, and whose primary duties are to preserve the peace, to protect life and property, and to enforce the laws of this state; any person who is or has been commissioned and employed as a peace officer by the sheriff of any county since January 1, 1966, and who has received a certificate attesting to the person's satisfactory completion of the peace officer training school as required by section 109.77 of the Revised Code and whose primary duties are to preserve the peace, protect life and property, and enforce the laws of this state; or any person deputized by the sheriff of any county and employed pursuant to section 2301.12 of the Revised Code as a criminal bailiff or court constable who has received a certificate attesting to the person's satisfactory completion of the peace officer training school as required by section 109.77 of the Revised Code and whose primary duties are to preserve the peace, protect life and property, and enforce the laws of this state.

(BB) "Township constable or police officer in a township police department or district" means any person who is commissioned and employed as a full-time peace officer pursuant to Chapter 505. or 509. of the Revised Code, who has received a certificate attesting to the person's satisfactory completion of the peace officer training school as required by section 109.77 of the Revised Code, and whose primary duties are to preserve the peace, protect life and property, and enforce the laws of this state.

(CC) "Drug agent" means any person who is either of the following:

(1) Employed full-time as a narcotics agent by a county narcotics agency created pursuant to section 307.15 of the Revised Code and has received a certificate attesting to the satisfactory completion of the peace officer training school as required by section 109.77 of the Revised Code;

(2) Employed full-time as an undercover drug agent as defined in section 109.79 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(DD) "Department of public safety enforcement agent" means a full-time employee of the department of public safety who is designated under section 5502.14 of the Revised Code as an enforcement agent and

who is in compliance with section 109.77 of the Revised Code.

(EE) "Natural resources law enforcement staff officer" means a full-time employee of the department of natural resources who is designated a natural resources law enforcement staff officer under section 1501.013 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(FF) "Park officer" means a full-time employee of the department of natural resources who is designated a park officer under section 1541.10 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(GG) "Forest officer" means a full-time employee of the department of natural resources who is designated a forest officer under section 1503.29 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(HH) "Preserve officer" means a full-time employee of the department of natural resources who is designated a preserve officer under section 1517.10 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(II) "Wildlife officer" means a full-time employee of the department of natural resources who is designated a wildlife officer under section 1531.13 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(JJ) "State watercraft officer" means a full-time employee of the department of natural resources who is designated a state watercraft officer under section 1547.521 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(KK) "Park district police officer" means a full-time employee of a park district who is designated pursuant to section 511.232 or 1545.13 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(LL) "Conservancy district officer" means a full-time employee of a conservancy district who is designated pursuant to section 6101.75 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(MM) "Municipal police officer" means a member of the organized police department of a municipal corporation who is employed full-time, is in compliance with section 109.77 of the Revised Code, and is not a member of the Ohio police and fire pension fund.

(NN) "Ohio veterans' home police officer" means any person who is employed at the Ohio veterans' home as a police officer pursuant to section

5907.02 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(OO) "Special police officer for a mental health institution" means any person who is designated as such pursuant to section 5119.14 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(PP) "Special police officer for an institution for the mentally retarded and developmentally disabled" means any person who is designated as such pursuant to section 5123.13 of the Revised Code and is in compliance with section 109.77 of the Revised Code.

(QQ) "State university law enforcement officer" means any person who is employed full-time as a state university law enforcement officer pursuant to section 3345.04 of the Revised Code and who is in compliance with section 109.77 of the Revised Code.

(RR) "Hamilton county municipal court bailiff" means a person appointed by the clerk of courts of the Hamilton county municipal court under division (A)(3) of section 1901.32 of the Revised Code who is employed full-time as a bailiff or deputy bailiff, who has received a certificate attesting to the person's satisfactory completion of the peace officer training school as required by division (C) of section 109.77 of the Revised Code, and whose primary duties are to preserve the peace, to protect life and property, and to enforce the laws of this state.

(SS) "House sergeant at arms" means any person appointed by the speaker of the house of representatives under division (B)(1) of section 101.311 of the Revised Code who has arrest authority under division (E)(1) of that section.

(TT) "Assistant house sergeant at arms" means any person appointed by the house sergeant at arms under division (C)(1) of section 101.311 of the Revised Code.

(UU) Notwithstanding section 2901.01 of the Revised Code, "law enforcement officer" means a sheriff, deputy sheriff, township constable or police officer in a township police department or district, drug agent, department of public safety enforcement agent, natural resources law enforcement staff officer, park officer, forest officer, preserve officer, wildlife officer, state watercraft officer, park district police officer, conservancy district officer, Ohio veterans' home police officer, special police officer for a mental health institution, special police officer for an institution for the mentally retarded and developmentally disabled, state university law enforcement officer, Hamilton county municipal court bailiff, municipal police officer, house sergeant at arms, or assistant house sergeant at arms.

(VV) "Fiduciary" means a person who does any of the following:

(1) Exercises any discretionary authority or control with respect to the management of the system or with respect to the management or disposition of its assets;

(2) Renders investment advice for a fee, direct or indirect, with respect to money or property of the system;

(3) Has any discretionary authority or responsibility in the administration of the system.

(WW) "Actuary" means an individual who satisfies all of the following requirements:

(1) Is a member of the American academy of actuaries;

(2) Is an associate or fellow of the society of actuaries;

(3) Has a minimum of five years' experience in providing actuarial services to public retirement plans.

Sec. 149.07. One bound copy of each of the final journals and appendixes ~~and fifty copies of maps of Ohio showing congressional, senatorial, and judicial districts of the state~~ shall be ~~sent~~ made available to each member of the general assembly.

Sec. 166.03. (A) There is hereby created the facilities establishment fund within the state treasury, consisting of proceeds from the issuance of obligations as specified under section 166.08 of the Revised Code; the moneys received by the state from the sources specified in section 166.09 of the Revised Code; service charges imposed under sections 166.06 and 166.07 of the Revised Code; any grants, gifts, or contributions of moneys received by the director of development to be used for loans made under section 166.07 of the Revised Code or for the payment of the allowable costs of project facilities; and all other moneys appropriated or transferred to the fund. Moneys in the loan guarantee fund in excess of four per cent of the unpaid principal amount of loan repayments guaranteed under section 166.06 of the Revised Code, but subject to the provisions and requirements of any guarantee contracts, may be transferred to the facilities establishment fund by the treasurer of state upon the order of the director of development. Moneys received by the state under Chapter 122. of the Revised Code, to the extent allocable to the utilization of moneys derived from proceeds of the sale of obligations pursuant to section 166.08 of the Revised Code, shall be credited to the facilities establishment fund.

(B) All moneys appropriated or transferred to the facilities establishment fund may be released at the request of the director of development for payment of allowable costs or the making of loans under this chapter, for transfer to the loan guarantee fund established in section

166.06 of the Revised Code, or for use for the purpose of or transfer to the funds established by sections 122.35, 122.42, 122.54, 122.55, 122.56, 122.561, 122.57, 122.601, and 122.80 of the Revised Code and, until July 1, 2003, the ~~funds fund~~ established by ~~sections 122.26 and~~ section 166.031 of the Revised Code, and, until July 1, 2007, the fund established by section 122.26 of the Revised Code, but only for such of those purposes as are within the authorization of Section 13 of Article VIII, Ohio Constitution, in all cases subject to the approval of the controlling board.

(C) The department of development, in the administration of the facilities establishment fund, is encouraged to utilize and promote the utilization of, to the maximum practicable extent, the other existing programs, business incentives, and tax incentives that department is required or authorized to administer or supervise.

Sec. 183.02. This section's references to years mean state fiscal years.

All payments received by the state pursuant to the tobacco master settlement agreement shall be deposited into the state treasury to the credit of the tobacco master settlement agreement fund, which is hereby created. All investment earnings of the fund shall also be credited to the fund. Except as provided in division (I) of this section, payments and interest credited to the fund shall be transferred by the director of budget and management as follows:

(A)(1) Of the first payment credited to the tobacco master settlement agreement fund in 2000 and the net amounts credited to the fund annually from 2000 to 2006 and in 2012, the following amount or percentage shall be transferred to the tobacco use prevention and cessation trust fund, created in section 183.03 of the Revised Code:

YEAR	AMOUNT OR PERCENTAGE
2000 (first payment credited)	\$104,855,222.85
2000 (net amount credited)	70.30%
2001	62.84
2002	61.41
2003	63.24
2004	66.65
2005	66.24
2006	65.97
2012	56.01

(2) Of the net amounts credited to the tobacco master settlement agreement fund in 2013, the director shall transfer to the tobacco use prevention and cessation trust fund the amount not transferred to the tobacco

use prevention and cessation trust fund from the net amounts credited to the tobacco master settlement agreement fund in 2002 due to H.B. No. 405 of the 124th general assembly. Of the net amounts credited to the tobacco master settlement agreement fund in 2014, the director shall transfer to the tobacco use prevention and cessation trust fund the amount not transferred to the tobacco use prevention and cessation trust fund from the net amounts credited to the tobacco master settlement agreement fund in 2003 due to H.B. No. 405 of the 124th general assembly.

(B) Of the first payment credited to the tobacco master settlement agreement fund in 2000 and the net amounts credited to the fund annually in 2000 and 2001, the following amount or percentage shall be transferred to the law enforcement improvements trust fund, created in section 183.10 of the Revised Code:

YEAR	AMOUNT OR PERCENTAGE
2000 (first payment credited)	\$10,000,000
2000 (net amount credited)	5.41%
2001	2.32

(C)(1) Of the first payment credited to the tobacco master settlement agreement fund in 2000 and the net amounts credited to the fund annually from 2000 to 2011, the following percentages shall be transferred to the southern Ohio agricultural and community development trust fund, created in section 183.11 of the Revised Code:

YEAR	PERCENTAGE
2000 (first payment credited)	5.00%
2000 (net amount credited)	8.73
2001	8.12
2002	9.18
2003	8.91
2004	7.84
2005	7.79
2006	7.76
2007	17.39
2008 through 2011	17.25

(2) Of the net amounts credited to the tobacco master settlement agreement fund in 2013, the director shall transfer to the southern Ohio agricultural and community development trust fund the amount not transferred to the southern Ohio agricultural and community development trust fund from the net amounts credited to the tobacco master settlement agreement fund in 2002 due to Sub. H.B. No. 405 of the 124th general

assembly. Of the net amounts credited to the tobacco master settlement agreement fund in 2014, the director shall transfer to the southern Ohio agricultural and community development trust fund the amount not transferred to the southern Ohio agricultural and community development trust fund from the net amounts credited to the tobacco master settlement agreement fund in 2003 due to Sub. H.B. No. 405 of the 124th general assembly.

(D)(1) The following percentages of the net amounts credited to the tobacco master settlement agreement fund annually shall be transferred to Ohio's public health priorities trust fund, created in section 183.18 of the Revised Code:

YEAR	PERCENTAGE
2000	5.41
2001	6.68
2002	6.79
2003	6.90
2004	7.82
2005	8.18
2006	8.56
2007	19.83
2008	19.66
2009	20.48
2010	21.30
2011	22.12
2012	10.47

(2) Of the net amounts credited to the tobacco master settlement agreement fund in 2013, the director shall transfer to the Ohio public health priorities trust fund the amount not transferred to the Ohio public health priorities trust fund from the net amounts credited to the tobacco master settlement agreement fund in 2002 due to Sub. H.B. No. 405 of the 124th general assembly. Of the net amounts credited to the tobacco master settlement agreement fund in 2014, the director shall transfer to the Ohio health priorities trust fund the amount not transferred to the Ohio health priorities trust fund from the net amounts credited to the tobacco master settlement agreement fund in 2003 due to Sub. H.B. No. 405 of the 124th general assembly.

(E) The following percentages of the net amounts credited to the tobacco master settlement agreement fund annually shall be transferred to the biomedical research and technology transfer trust fund, created in section 183.19 of the Revised Code:

YEAR	PERCENTAGE
2000	2.71
2001	14.03
2002	13.29
2003	12.73
2004	13.78
2005	14.31
2006	14.66
2007	49.57
2008 to 2011	45.06
2012	18.77

(F) Of the amounts credited to the tobacco master settlement agreement fund annually, the following amounts shall be transferred to the education facilities trust fund, created in section 183.26 of the Revised Code:

YEAR	AMOUNT
2000	\$133,062,504.95
2001	128,938,732.73
2002	185,804,475.78
2003	180,561,673.11
2004	122,778,219.49
2005	121,389,325.80
2006	120,463,396.67
2007	246,389,369.01
2008 to 2011	267,531,291.85
2012	110,954,545.28

(G) Of the amounts credited to the tobacco master settlement agreement fund annually, from 2000 to 2012 five million dollars per year shall be transferred to the education facilities endowment fund, created in section 183.27 of the Revised Code. From 2013 to 2025, the following percentages of the amounts credited to the tobacco master settlement agreement fund annually shall be transferred to the endowment fund:

YEAR	PERCENTAGE
2013	30.22
2014	33.36
2015 to 2025	40.90

(H) The following percentages of the net amounts credited to the tobacco master settlement agreement fund annually shall be transferred to the education technology trust fund, created in section 183.28 of the Revised Code:

YEAR	PERCENTAGE
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2000	7.44
2001	6.01
2002	9.33
2003	8.22
2004	3.91
2005	3.48
2006	3.05
2007	13.21
2008	18.03
2009	17.21
2010	16.39
2011	15.57
2012	14.75

(I) If in any year from 2001 to 2012 the payments and interest credited to the tobacco master settlement agreement fund during the year amount to less than the amounts required to be transferred to the education facilities trust fund and the education facilities endowment fund that year, the director of budget and management shall make none of the transfers required by divisions (A) to (H) of this section.

(J) If in any year from 2000 to 2025 the payments credited to the tobacco master settlement agreement fund during the year exceed the following amounts, the director of budget and management shall transfer the excess to the income tax reduction fund, created in section 131.44 of the Revised Code:

YEAR	AMOUNT
2000	\$443,892,767.51
2001	348,780,049.22
2002	418,783,038.09
2003	422,746,368.61
2004	352,827,184.57
2005	352,827,184.57
2006	352,827,184.57
2007	352,827,184.57
2008 to 2017	383,779,323.15
2018 to 2025	403,202,282.16

Sec. 307.6910. (A) As used in this section, "contracting subdivision" means any political subdivision or taxing district that enters into an agreement with a board of county commissioners as authorized by this section.

(B) A board of county commissioners may enter into an agreement with

the legislative authority of one or more political subdivisions or taxing districts located wholly or partially within the territorial boundaries of the county providing for both of the following:

(1) Authorization for the board of county commissioners to receive funds due the political subdivision or taxing district from the county treasury, other than funds raised by taxes levied by the political subdivision or taxing district, including, but not limited to, the political subdivision's or taxing district's share of the undivided local government fund, provided those received funds may lawfully be applied to the purpose for which money is owed to the county;

(2) The crediting of the funds so received by the county against money owed to it by the political subdivision or taxing district.

The agreement shall be in writing and include the signature of an authorized officer or representative of the county and of the political subdivision or taxing district.

(C) Upon entering into an agreement, the board of county commissioners shall cause two copies of the agreement, certified by an authorized officer or representative of the county and of the contracting subdivision, to be transmitted to the county auditor. The county auditor shall forward one copy of the agreement to the county treasurer and shall present the other copy of the agreement to the county budget commission. The county budget commission shall give effect to the agreement in determining or revising the amounts to be credited to the funds of the county and the contracting subdivision in the official or amended official certificate of estimated resources under sections 5705.35 and 5705.36 of the Revised Code.

(D) The county auditor may rely on the certified agreement entered into under division (B) of this section for the purpose of making a certification under division (D) of section 5705.41 of the Revised Code for a county contract or order of money incurred on behalf of the contracting subdivision if the county auditor finds that the amount credited to the county under division (B)(2) of this section is available in the amount and at the time necessary to meet the obligation.

(E) The county auditor and county treasurer, in carrying out their statutory duties regarding the crediting and distribution of money to the funds of the parties to agreements entered into under this section, shall give effect to any such agreements certified to the county auditor under this section. A certified agreement shall not affect the time at which moneys otherwise would be available by law to the parties to the agreement.

(F) The terms of an agreement entered into under this section may be

enforced in the court of common pleas of the county that is a party to the agreement in an action for a writ of mandamus. For purposes of that action, it shall be deemed that the legislative authority of the contracting subdivision has a duty to allow payments to the county as specified in the agreement, that the board of county commissioners of the county has a duty to receive those payments in the manner specified in the agreement, and that those duties are specifically enjoined by law and result from an office, trust, or station.

Sec. 317.33. (A) Except as otherwise provided in division (B) of this section, if a county recorder refuses to accept a deed or other instrument of writing presented to the recorder for recording, the legal fee for recording it being paid or tendered; or refuses to give a receipt therefor, when required; or fails to number consecutively all deeds or other instruments of writing upon receipt; or fails to index a deed or other instrument of writing, by the morning of the day next after it is filed for record; or neglects, without reasonable cause, to record a deed or other instrument of writing within twenty days after it is received for record; or demands and receives a greater fee for the recorder's services than that allowed by law; or knowingly endorses on a deed or other instrument of writing a different date from that on which it was presented for record, or a different date from that on which it was recorded; or refuses to make out and certify a copy of any record in the recorder's office, when demanded, the recorder's legal fee for the copy being paid or tendered; or purposely destroys, defaces, or injures any book, record, or seal belonging to the recorder's office, or any deed or other instrument of writing deposited in the recorder's office for record, or negligently suffers it to be destroyed, defaced, or injured; or does or omits any other act, contrary to sections 317.01 to 317.33 of the Revised Code, the recorder shall be liable solely on the recorder's bond to any party harmed by the improper conduct.

(B) If a county recorder, acting under division (B) of section 317.13 of the Revised Code, improperly refuses to record an instrument of writing in a manner that is not described in division (A)(6)(b) of section 2744.03 of the Revised Code, the recorder shall not be personally liable on account of the improper refusal and the surety that issued the recorder's bond shall not have a right of subrogation against the recorder on account of a claim made on the recorder's bond as a result of the improper refusal.

Sec. 742.01. As used in this chapter:

(A)(1) "Police department" means the police department of a municipal corporation.

(2) "Member of a police department" means any of the following:

(a) Any person who receives an original appointment as a full-time regular police officer in a police department from a duly established civil service eligible list or pursuant to section 124.411 of the Revised Code, or who is described in section 742.511 of the Revised Code, or who transfers from the public employees retirement system to the Ohio police and fire pension fund pursuant to section 742.513 of the Revised Code, or who is appointed pursuant to section 737.15 or 737.16 of the Revised Code as a full-time regular police officer and is paid solely out of public funds of the employing municipal corporation;

(b) Any person who, on October 1, 1965, was contributing four per cent of the person's annual salary to a police relief and pension fund established under former section 741.32 of the Revised Code;

(c) Any person who commences employment on or after September 16, 1998, as a full-time police officer with a police department in a position in which the person is required to satisfactorily complete a peace officer training course in compliance with section 109.77 of the Revised Code.

(B)(1) "Fire department" means a fire department of the state or an instrumentality of the state or of a municipal corporation, township, joint fire district, or other political subdivision.

(2) "Member of a fire department" means all of the following:

(a) Any person who commences employment after November 8, 1990, as a full-time firefighter with a fire department, in a position in which the person is required to satisfactorily complete or have satisfactorily completed a firefighter training course approved under former section 3303.07 or section 4765.55 or conducted under section 3737.33 of the Revised Code;

(b) Any person who has elected under section 742.515 of the Revised Code to be transferred from the public employees retirement system to the Ohio police and fire pension fund;

(c) Any full-time firefighter who, on November 8, 1990, is a member of the Ohio police and fire pension fund.

(C) "Employee" means any person who is a member of a police department or a member of a fire department.

(D) "Employer" means the government entity by which an employee is employed and paid.

(E) "Member of the fund" means any person, except an other system retirant as defined in section 742.26 of the Revised Code, who is contributing a percentage of the person's annual salary to the Ohio police and fire pension fund or who is receiving a disability benefit or pension from the fund as a result of service in a police or fire department. A person, other than an other system retirant, who is contributing a percentage of the

person's annual salary to the fund and is dismissed, resigns, or is granted a leave of absence from a police or fire department shall be considered a "member of the fund" for a period of twelve months after the first day of the dismissal, resignation, or leave of absence, provided the sum deducted from the person's salary and credited to the person's account in the fund remains on deposit in the fund.

(F) "Year," for the purpose of determining benefits, means any twelve consecutive calendar months of active service as a member of the fund, or, in the case of a member whose salary is paid weekly or biweekly, fifty-two consecutive weeks of active service as a member.

(G) "Average annual salary" means the highest average annual salary of a member of the fund during any three years of contributions determined by dividing the member's total salary as an employee during the years by three.

(H) "Normal service pension benefit" means the pension benefit payable to a member of the fund under division (C)(1) of section 742.37 of the Revised Code upon attaining age forty-eight.

(I) "Retirement allowance" means the total pension benefit or disability benefit to which a member of the fund may be entitled under division (C) of section 742.37 or section 742.39 of the Revised Code.

(J) "Fiduciary" means a person who does any of the following:

(1) Exercises any discretionary authority or control with respect to the management of the system, or with respect to the management or disposition of its assets;

(2) Renders investment advice for a fee, direct or indirect, with respect to money or property of the system;

(3) Has any discretionary authority or responsibility in the administration of the system.

(K) "Terminal pay" means the following payments made by an employer to an employee on termination of employment:

(1) Payments for accrued but unused leave, including sick leave, vacation, personal leave, and compensatory time;

(2) Payments deferred more than one year compensating the employee for holidays worked or for longevity;

(3) Payments for overtime worked that are not included either in the payroll for the period in which the overtime is worked or for the next subsequent payroll period;

(4) Other payments that are not compensation for services rendered in the last pay period in which services were rendered and are designated as terminal pay by rule of the board of trustees of the Ohio police and fire pension fund. The board shall not designate as terminal pay payments

deferred one year or less compensating an employee for holidays worked or for longevity.

(L)(1) Except as otherwise provided in this division, "salary" means all compensation, wages, and other earnings paid to an employee by reason of employment, but without regard to whether compensation, wages, or other earnings are treated as deferred income for federal income tax purposes. "Salary" includes payments for overtime that are made not later than the payroll following the payroll period in which the overtime is worked.

(2) "Salary" does not include any of the following:

(a) Compensation for services outside the scope of an employee's regular employment;

(b) Reimbursement of expenses;

(c) Terminal pay;

(d) Payments for accrued but unused sick leave or personal leave, or vacation pay covering periods for which salary, compensation, or benefits are paid;

(e) Payments made under division (B), (C), or (E) of section 5923.05 of the Revised Code, Section 4 of Substitute Senate Bill No. 3 of the 119th general assembly, or Section 3 of Amended Substitute Senate Bill No. 164 of the 124th general assembly, or Amended Substitute House Bill No. 405 of the 124th general assembly;

(f) Payments made to or on behalf of an employee that are in excess of the annual compensation that may be taken into account by the fund under division (a)(17) of section 401 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 401(a)(17), as amended.

(3) The board shall determine by rule whether any compensation, wages, or earnings not enumerated in this division is salary, and its decision shall be final.

(M) "Actuary" means an individual who satisfies all of the following requirements:

(1) Is a member of the American academy of actuaries;

(2) Is an associate or fellow of the society of actuaries;

(3) Has a minimum of five years' experience in providing actuarial services to public retirement plans.

Sec. ~~1309.401~~ 1309.528. (A) All fees collected by the secretary of state for filings under Title XIII or XVII of the Revised Code shall be deposited into the state treasury to the credit of the corporate and uniform commercial code filing fund, which is hereby created. All moneys credited to the fund, subject to division (B) of this section, shall be used ~~only~~ for the purpose of paying for the operations of the office of the secretary of state, ~~other than the~~

~~division of elections~~, and for the purpose of paying for expenses relating to the processing of filings under Title XIII or XVII of the Revised Code.

(B) ~~The secretary of state business technology fund~~ There is hereby created in the state treasury the secretary of state business technology fund. One per cent of the money credited to the corporate and uniform commercial code filing fund created in division (A) of this section shall be transferred to the credit of this fund. All moneys credited to this fund shall be used only for the upkeep, improvement, or replacement of equipment, or for the purpose of training employees in the use of equipment, used to conduct business of the secretary of state's office under Title XIII or XVII of the Revised Code.

Sec. 1333.11. As used in sections 1333.11 to 1333.21 of the Revised Code:

(A) "Cost to the retailer" means the invoice cost of cigarettes to the retailer, or the replacement cost of cigarettes to the retailer within thirty days prior to the date of sale, in the quantity last purchased, whichever is lower, less all trade discounts except customary discounts for cash, to which shall be added the cost of doing business by the retailer as evidenced by the standards and the methods of accounting regularly employed by ~~him~~ the retailer in ~~his~~ the retailer's allocation of overhead costs and expenses, paid or incurred. "Cost to the retailer" must include, without limitation, labor, including salaries of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, insurance, advertising, and taxes, exclusive of county cigarette taxes paid or payable on the cigarettes. Where the sale to the retailer is on a cash and carry basis, the cartage to the retail outlet, if performed or paid for by the retailer, shall be added to the invoice cost of the cigarettes to the retailer. In the absence of proof of a lesser or higher cost by the retailer, the cartage cost shall be three-fourths of one per cent of the invoice cost of the cigarettes to the retailer, not including the amount added thereto by the wholesaler for the face value of state and county cigarette tax stamps affixed to each package of cigarettes.

(B) In the absence of proof of a lesser or higher cost of doing business by the retailer making the sale, the cost of doing business to the retailer shall be six per cent of the invoice cost of the cigarettes to the retailer exclusive of the face value of county cigarette taxes paid on the cigarettes or of the replacement cost of the cigarettes to the retailer within thirty days prior to the date of sale in the quantity last purchased exclusive of the face value of county cigarette taxes paid on the cigarettes, whichever is lower, less all trade discounts except customary discounts for cash.

(C) "Cost to the wholesaler" means the invoice cost of the cigarettes to the wholesaler, or the replacement cost of the cigarettes to the wholesaler within thirty days prior to the date of sale, in the quantity last purchased, whichever is lower, less all trade discounts except customary discounts for cash, to which shall be added a wholesaler's markup to cover in part the cost of doing business, which wholesaler's markup, in the absence of proof of a lesser or higher cost of doing business by the wholesaler as evidenced by the standards and methods of accounting regularly employed by ~~him~~ the wholesaler in ~~his~~ the wholesaler's allocation of overhead costs and expenses, paid or incurred, including without limitation, labor, salaries of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery, delivery costs, all types of licenses, taxes, insurance, and advertising, shall be two and five-tenths per cent of said invoice cost of the cigarettes to the wholesaler, to which shall be added the full face value of state and county cigarette tax stamps affixed by the wholesaler to each package of cigarettes, or of the replacement cost of the cigarettes to the wholesaler within thirty days prior to the date of sale in the quantity last purchased, whichever is lower, less all trade discounts except customary discounts for cash. Where the sale by the wholesaler to the retailer is on a cash and carry basis, the wholesaler may, in the absence of proof of a lesser or higher cost, allow to the retailer an amount not to exceed three-fourths of one per cent of the "cost to the wholesaler" excluding the amount added thereto for the face value of state and county cigarette tax stamps affixed to each package of cigarettes.

(D) Any person licensed to sell cigarettes as both a wholesaler and a retailer, who does sell cigarettes at retail, shall, in determining "cost to the retailer", first compute "cost to the wholesaler" as provided in division (C) of this section; said "cost to the wholesaler" shall then be used in lieu of the lower of either invoice cost or replacement cost less all trade discounts except customary discounts for cash in computing "cost to the retailer" as provided in divisions (A) and (B) of this section.

(E) In all advertisements, offers for sale, or sales involving two or more items at a combined price and in all advertisements, offers for sale, or sales involving the giving of any concession of any kind, whether it be coupons or otherwise, the retailer's or wholesaler's selling price shall not be below the "cost to the retailer" or the "cost to wholesaler", respectively, of all articles, products, commodities, and concessions included in such transactions.

(F)(1) "Sell at retail," "sales at retail," and "retail sales" include any transfer of title to tangible personal property for a valuable consideration made, in the ordinary course of trade or usual prosecution of the seller's

business, to the purchaser for consumption or use.

(2) "Sell at wholesale," "sales at wholesale," and "wholesale sales" include any such transfer of title to tangible personal property for the purpose of resale.

(G) "Retailer" includes any person who is permitted to sell cigarettes at retail within this state under section 5743.15 of the Revised Code.

(H) "Wholesaler" includes any person who is permitted to sell cigarettes at wholesale within this state under said section.

(I) "Person" includes individuals, corporations, partnerships, associations, joint-stock companies, business trusts, unincorporated organizations, receivers, or trustees.

(J) "County cigarette taxes" means the taxes levied under section 5743.024 or 5743.026 of the Revised Code.

Sec. 3307.01. As used in this chapter:

(A) "Employer" means the board of education, school district, governing authority of any community school established under Chapter 3314. of the Revised Code, college, university, institution, or other agency within the state by which a teacher is employed and paid.

(B) "Teacher" means all of the following:

(1) Any person paid from public funds and employed in the public schools of the state under any type of contract described in section 3319.08 of the Revised Code in a position for which the person is required to have a license issued pursuant to sections 3319.22 to 3319.31 of the Revised Code;

(2) Any person employed as a teacher by a community school pursuant to Chapter 3314. of the Revised Code;

(3) Any person holding an internship certificate issued under section 3319.28 of the Revised Code and employed in a public school in this state;

(4) Any person having a license issued pursuant to sections 3319.22 to 3319.31 of the Revised Code and employed in a public school in this state in an educational position, as determined by the state board of education, under programs provided for by federal acts or regulations and financed in whole or in part from federal funds, but for which no licensure requirements for the position can be made under the provisions of such federal acts or regulations;

(5) Any other teacher or faculty member employed in any school, college, university, institution, or other agency wholly controlled and managed, and supported in whole or in part, by the state or any political subdivision thereof, including Central state university, Cleveland state university, the university of Toledo, and the medical college of Ohio at Toledo;

(6) The educational employees of the department of education, as determined by the state superintendent of public instruction.

In all cases of doubt, the state teachers retirement board shall determine whether any person is a teacher, and its decision shall be final.

"Teacher" does not include any academic or administrative employee of a public institution of higher education, as defined in section 3305.01 of the Revised Code, who participates in an alternative retirement plan established under Chapter 3305. of the Revised Code.

(C) "Member" means any person included in the membership of the state teachers retirement system, which shall consist of all teachers and contributors as defined in divisions (B) and (D) of this section and all disability benefit recipients, as defined in section 3307.50 of the Revised Code. However, for purposes of this chapter, the following persons shall not be considered members:

(1) A student, intern, or resident who is not a member while employed part-time by a school, college, or university at which the student, intern, or resident is regularly attending classes;

(2) A person denied membership pursuant to section 3307.24 of the Revised Code;

(3) An other system retirant, as defined in section 3307.35 of the Revised Code, or a superannuate;

(4) An individual employed in a program established pursuant to the "Job Training Partnership Act," 96 Stat. 1322 (1982), 29 U.S.C.A. 1501.

(D) "Contributor" means any person who has an account in the teachers' savings fund or defined contribution fund.

(E) "Beneficiary" means any person eligible to receive, or in receipt of, a retirement allowance or other benefit provided by this chapter.

(F) "Year" means the year beginning the first day of July and ending with the thirtieth day of June next following, except that for the purpose of determining final average salary under the plan described in sections 3307.50 to 3307.79 of the Revised Code, "year" may mean the contract year.

(G) "Local district pension system" means any school teachers pension fund created in any school district of the state in accordance with the laws of the state prior to September 1, 1920.

(H) "Employer contribution" means the amount paid by an employer, as determined by the employer rate, including the normal and deficiency rates, contributions, and funds wherever used in this chapter.

(I) "Five years of service credit" means employment covered under this chapter and employment covered under a former retirement plan operated,

recognized, or endorsed by a college, institute, university, or political subdivision of this state prior to coverage under this chapter.

(J) "Actuary" means the actuarial consultant to the state teachers retirement board, who shall be either of the following:

(1) A member of the American academy of actuaries;

(2) A firm, partnership, or corporation of which at least one person is a member of the American academy of actuaries.

(K) "Fiduciary" means a person who does any of the following:

(1) Exercises any discretionary authority or control with respect to the management of the system, or with respect to the management or disposition of its assets;

(2) Renders investment advice for a fee, direct or indirect, with respect to money or property of the system;

(3) Has any discretionary authority or responsibility in the administration of the system.

(L)(1) Except as provided in this division, "compensation" means all salary, wages, and other earnings paid to a teacher by reason of the teacher's employment, including compensation paid pursuant to a supplemental contract. The salary, wages, and other earnings shall be determined prior to determination of the amount required to be contributed to the teachers' savings fund or defined contribution fund under section 3307.26 of the Revised Code and without regard to whether any of the salary, wages, or other earnings are treated as deferred income for federal income tax purposes.

(2) Compensation does not include any of the following:

(a) Payments for accrued but unused sick leave or personal leave, including payments made under a plan established pursuant to section 124.39 of the Revised Code or any other plan established by the employer;

(b) Payments made for accrued but unused vacation leave, including payments made pursuant to section 124.13 of the Revised Code or a plan established by the employer;

(c) Payments made for vacation pay covering concurrent periods for which other salary, compensation, or benefits under this chapter are paid;

(d) Amounts paid by the employer to provide life insurance, sickness, accident, endowment, health, medical, hospital, dental, or surgical coverage, or other insurance for the teacher or the teacher's family, or amounts paid by the employer to the teacher in lieu of providing the insurance;

(e) Incidental benefits, including lodging, food, laundry, parking, or services furnished by the employer, use of the employer's property or equipment, and reimbursement for job-related expenses authorized by the

employer, including moving and travel expenses and expenses related to professional development;

(f) Payments made by the employer in exchange for a member's waiver of a right to receive any payment, amount, or benefit described in division (L)(2) of this section;

(g) Payments by the employer for services not actually rendered;

(h) Any amount paid by the employer as a retroactive increase in salary, wages, or other earnings, unless the increase is one of the following:

(i) A retroactive increase paid to a member employed by a school district board of education in a position that requires a license designated for teaching and not designated for being an administrator issued under section 3319.22 of the Revised Code that is paid in accordance with uniform criteria applicable to all members employed by the board in positions requiring the licenses;

(ii) A retroactive increase paid to a member employed by a school district board of education in a position that requires a license designated for being an administrator issued under section 3319.22 of the Revised Code that is paid in accordance with uniform criteria applicable to all members employed by the board in positions requiring the licenses;

(iii) A retroactive increase paid to a member employed by a school district board of education as a superintendent that is also paid as described in division (L)(2)(h)(i) of this section;

(iv) A retroactive increase paid to a member employed by an employer other than a school district board of education in accordance with uniform criteria applicable to all members employed by the employer.

(i) Payments made to or on behalf of a teacher that are in excess of the annual compensation that may be taken into account by the retirement system under division (a)(17) of section 401 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 401(a)(17), as amended. For a teacher who first establishes membership before July 1, 1996, the annual compensation that may be taken into account by the retirement system shall be determined under division (d)(3) of section 13212 of the "Omnibus Budget Reconciliation Act of 1993," Pub. L. No. 103-66, 107 Stat. 472.

(j) Payments made under division (B), (C), or (E) of section 5923.05 of the Revised Code, Section 4 of Substitute Senate Bill No. 3 of the 119th general assembly, ~~or~~ Section 3 of Amended Substitute Senate Bill No. 473 164 of the 124th general assembly, or Amended Substitute House Bill No. 405 of the 124th general assembly;

(k) Anything of value received by the teacher that is based on or attributable to retirement or an agreement to retire.

(3) The retirement board shall determine by rule both of the following:

(a) Whether particular forms of earnings are included in any of the categories enumerated in this division;

(b) Whether any form of earnings not enumerated in this division is to be included in compensation.

Decisions of the board made under this division shall be final.

(M) "Superannuate" means both of the following:

(1) A former teacher receiving from the system a retirement allowance under section 3307.58 or 3307.59 of the Revised Code;

(2) A former teacher receiving any benefit from the system under a plan established under section 3307.81 of the Revised Code.

For purposes of section 3307.35 of the Revised Code, "superannuate" also means a former teacher receiving from the system a combined service retirement benefit paid in accordance with section 3307.57 of the Revised Code, regardless of which retirement system is paying the benefit.

Sec. 3309.01. As used in this chapter:

(A) "Employer" or "public employer" means boards of education, school districts, joint vocational districts, governing authorities of community schools established under Chapter 3314. of the Revised Code, educational institutions, technical colleges, state, municipal, and community colleges, community college branches, universities, university branches, other educational institutions, or other agencies within the state by which an employee is employed and paid, including any organization using federal funds, provided the federal funds are disbursed by an employer as determined by the above. In all cases of doubt, the school employees retirement board shall determine whether any employer is an employer as defined in this chapter, and its decision shall be final.

(B) "Employee" means all of the following:

(1) Any person employed by a public employer in a position for which the person is not required to have a certificate or license issued pursuant to sections 3319.22 to 3319.31 of the Revised Code;

(2) Any person who performs a service common to the normal daily operation of an educational unit even though the person is employed and paid by one who has contracted with an employer to perform the service, and the contracting board or educational unit shall be the employer for the purposes of administering the provisions of this chapter;

(3) Any person, not a faculty member, employed in any school or college or other institution wholly controlled and managed, and wholly or partly supported by the state or any political subdivision thereof, the board of trustees, or other managing body of which shall accept the requirements

and obligations of this chapter.

In all cases of doubt, the school employees retirement board shall determine whether any person is an employee, as defined in this division, and its decision is final.

(C) "Prior service" means all service rendered prior to September 1, 1937:

(1) As an employee as defined in division (B) of this section;

(2) As an employee in a capacity covered by the public employees retirement system or the state teachers retirement system;

(3) As an employee of an institution in another state, service credit for which was procured by a member under the provisions of section 3309.31 of the Revised Code.

Prior service, for service as an employee in a capacity covered by the public employees retirement system or the state teachers retirement system, shall be granted a member under qualifications identical to the laws and rules applicable to service credit in those systems.

Prior service shall not be granted any member for service rendered in a capacity covered by the public employees retirement system, the state teachers retirement system, and this system in the event the service credit has, in the respective systems, been received, waived by exemption, or forfeited by withdrawal of contributions, except as provided in this chapter.

If a member who has been granted prior service should, subsequent to September 16, 1957, and before retirement, establish three years of contributing service in the public employees retirement system, or one year in the state teachers retirement system, then the prior service granted shall become, at retirement, the liability of the other system, if the prior service or employment was in a capacity that is covered by that system.

The provisions of this division shall not cancel any prior service granted a member by the school employees retirement board prior to August 1, 1959.

(D) "Total service," "total service credit," or "Ohio service credit" means all contributing service of a member of the school employees retirement system, and all prior service, computed as provided in this chapter, and all service established pursuant to sections 3309.31, 3309.311, and 3309.33 of the Revised Code. In addition, "total service" includes any period, not in excess of three years, during which a member was out of service and receiving benefits from the state insurance fund, provided the injury or incapacitation was the direct result of school employment.

(E) "Member" means any employee, except an SERS retirant or other system retirant as defined in section 3309.341 of the Revised Code, who has

established membership in the school employees retirement system. "Member" includes a disability benefit recipient.

(F) "Contributor" means any person who has an account in the employees' savings fund. When used in the sections listed in division (B) of section 3309.82 of the Revised Code, "contributor" includes any person participating in a plan established under section 3309.81 of the Revised Code.

(G) "Retirant" means any former member who retired and is receiving a service retirement allowance or commuted service retirement allowance as provided in this chapter.

(H) "Beneficiary" or "beneficiaries" means the estate or a person or persons who, as the result of the death of a contributor or retirant, qualifies for or is receiving some right or benefit under this chapter.

(I) "Interest," as specified in division (E) of section 3309.60 of the Revised Code, means interest at the rates for the respective funds and accounts as the school employees retirement board may determine from time to time, except as follows:

(1) The rate of interest credited on employee contributions at retirement shall be four per cent per annum, compounded annually, to and including June 30, 1955; three per cent per annum, compounded annually, from July 1, 1955, to and including June 30, 1963; three and one-quarter per cent per annum, compounded annually, from July 1, 1963, through June 30, 1966; and thereafter, four per cent per annum compounded annually until a change in the amount is recommended by the system's actuary and approved by the retirement board. Subsequent to June 30, 1959, the retirement board shall discontinue the annual crediting of current interest on a contributor's accumulated contributions. Noncrediting of current interest shall not affect the rate of interest at retirement guaranteed under this division.

(2) In determining the reserve value for purposes of computing the amount of the contributor's annuity, the rate of interest used in the annuity values shall be four per cent per annum through September 30, 1956; three per cent per annum compounded annually from October 1, 1956, through June 30, 1963; three and one-quarter per cent per annum compounded annually from July 1, 1963, through June 30, 1966; and, thereafter, four per cent per annum compounded annually until a change in the amount is recommended by the system's actuary and approved by the retirement board. In the purchase of out-of-state service credit as provided in section 3309.31 of the Revised Code, and in the purchase of an additional annuity, as provided in section 3309.47 of the Revised Code, interest shall be computed and credited to reserves therefor at the rate the school employees retirement

board shall fix as regular interest thereon.

(J) "Accumulated contributions" means the sum of all amounts credited to a contributor's account in the employees' savings fund together with any regular interest credited thereon at the rates approved by the retirement board prior to retirement.

(K) "Final average salary" means the sum of the annual compensation for the three highest years of compensation for which contributions were made by the member, divided by three. If the member has a partial year of contributing service in the year in which the member terminates employment and the partial year is at a rate of compensation that is higher than the rate of compensation for any one of the highest three years of annual earnings, the board shall substitute the compensation earned for the partial year for the compensation earned for a similar fractional portion in the lowest of the three high years of annual compensation before dividing by three. If a member has less than three years of contributing membership, the final average salary shall be the total compensation divided by the total number of years, including any fraction of a year, of contributing service.

(L) "Annuity" means payments for life derived from contributions made by a contributor and paid from the annuity and pension reserve fund as provided in this chapter. All annuities shall be paid in twelve equal monthly installments.

(M)(1) "Pension" means annual payments for life derived from appropriations made by an employer and paid from the employers' trust fund or the annuity and pension reserve fund. All pensions shall be paid in twelve equal monthly installments.

(2) "Disability retirement" means retirement as provided in section 3309.40 of the Revised Code.

(N) "Retirement allowance" means the pension plus the annuity.

(O)(1) "Benefit" means a payment, other than a retirement allowance or the annuity paid under section 3309.341 of the Revised Code, payable from the accumulated contributions of the member or the employer, or both, under this chapter and includes a disability allowance or disability benefit.

(2) "Disability allowance" means an allowance paid on account of disability under section 3309.401 of the Revised Code.

(3) "Disability benefit" means a benefit paid as disability retirement under section 3309.40 of the Revised Code, as a disability allowance under section 3309.401 of the Revised Code, or as a disability benefit under section 3309.35 of the Revised Code.

(P) "Annuity reserve" means the present value, computed upon the basis of mortality tables adopted by the school employees retirement board, of all

payments to be made on account of any annuity, or benefit in lieu of any annuity, granted to a retirant.

(Q) "Pension reserve" means the present value, computed upon the basis of mortality tables adopted by the school employees retirement board, of all payments to be made on account of any pension, or benefit in lieu of any pension, granted to a retirant or a beneficiary.

(R) "Year" means the year beginning the first day of July and ending with the thirtieth day of June next following.

(S) "Local district pension system" means any school employees' pension fund created in any school district of the state prior to September 1, 1937.

(T) "Employer contribution" means the amount paid by an employer as determined under section 3309.49 of the Revised Code.

(U) "Fiduciary" means a person who does any of the following:

(1) Exercises any discretionary authority or control with respect to the management of the system, or with respect to the management or disposition of its assets;

(2) Renders investment advice for a fee, direct or indirect, with respect to money or property of the system;

(3) Has any discretionary authority or responsibility in the administration of the system.

(V)(1) Except as otherwise provided in this division, "compensation" means all salary, wages, and other earnings paid to a contributor by reason of employment. The salary, wages, and other earnings shall be determined prior to determination of the amount required to be contributed to the employees' savings fund under section 3309.47 of the Revised Code and without regard to whether any of the salary, wages, or other earnings are treated as deferred income for federal income tax purposes.

(2) Compensation does not include any of the following:

(a) Payments for accrued but unused sick leave or personal leave, including payments made under a plan established pursuant to section 124.39 of the Revised Code or any other plan established by the employer;

(b) Payments made for accrued but unused vacation leave, including payments made pursuant to section 124.13 of the Revised Code or a plan established by the employer;

(c) Payments made for vacation pay covering concurrent periods for which other salary or compensation is also paid or during which benefits are paid under this chapter;

(d) Amounts paid by the employer to provide life insurance, sickness, accident, endowment, health, medical, hospital, dental, or surgical coverage,

or other insurance for the contributor or the contributor's family, or amounts paid by the employer to the contributor in lieu of providing the insurance;

(e) Incidental benefits, including lodging, food, laundry, parking, or services furnished by the employer, use of the employer's property or equipment, and reimbursement for job-related expenses authorized by the employer, including moving and travel expenses and expenses related to professional development;

(f) Payments made to or on behalf of a contributor that are in excess of the annual compensation that may be taken into account by the retirement system under division (a)(17) of section 401 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 401(a)(17), as amended. For a contributor who first establishes membership before July 1, 1996, the annual compensation that may be taken into account by the retirement system shall be determined under division (d)(3) of section 13212 of the "Omnibus Budget Reconciliation Act of 1993," Pub. L. 103-66, 107 Stat. 472;

(g) Payments made under division (B), (C), or (E) of section 5923.05 of the Revised Code, Section 4 of Substitute Senate Bill No. 3 of the 119th general assembly, ~~or~~ Section 3 of Amended Substitute Senate Bill No. 164 of the 124th general assembly, or Amended Substitute House Bill No. 405 of the 124th general assembly;

(h) Anything of value received by the contributor that is based on or attributable to retirement or an agreement to retire, except that payments made on or before January 1, 1989, that are based on or attributable to an agreement to retire shall be included in compensation if both of the following apply:

(i) The payments are made in accordance with contract provisions that were in effect prior to January 1, 1986.

(ii) The employer pays the retirement system an amount specified by the retirement board equal to the additional liability from the payments.

(3) The retirement board shall determine by rule whether any form of earnings not enumerated in this division is to be included in compensation, and its decision shall be final.

(W) "Disability benefit recipient" means a member who is receiving a disability benefit.

(X) "Actuary" means an individual who satisfies all of the following requirements:

(1) Is a member of the American academy of actuaries;

(2) Is an associate or fellow of the society of actuaries;

(3) Has a minimum of five years' experience in providing actuarial services to public retirement plans.

Sec. 3313.37. (A)(1) The board of education of any city, local, or exempted village school district may build, enlarge, repair, and furnish the necessary schoolhouses, purchase or lease sites therefor, or rights-of-way thereto, or purchase or lease real estate to be used as playgrounds for children or rent suitable schoolrooms, either within or without the district, and provide the necessary apparatus and make all other necessary provisions for the schools under its control.

(2) A governing board of an educational service center may acquire, lease or lease-purchase, or enter into a contract to purchase, lease or lease-purchase, or sell real and personal property and may construct, enlarge, repair, renovate, furnish, or equip facilities, buildings, or structures for the educational service center's purposes. The board may enter into loan agreements, including mortgages, for the acquisition of such property. If a governing board exercises any of these powers to acquire office or classroom space, the board of county commissioners has no obligation to provide and equip offices and to provide heat, light, water, and janitorial services for the use of the service center pursuant to section 3319.19 of the Revised Code, unless there is a contract as provided by division (D) of that section.

(3) A board of county commissioners may issue securities of the county pursuant to Chapter 133. of the Revised Code for the acquisition of real and personal property or for the construction, enlargement, repair, or renovation of facilities, buildings, or structures by an educational service center, but only if the county has a contract under division (D) of section 3319.19 of the Revised Code with the educational service center whereby the educational service center agrees to pay the county an amount equal to the debt charges on the issued securities on or before the date those charges fall due. For the purposes of this section, "debt charges" and "securities" have the same meanings as in section 133.01 of the Revised Code.

(B)(1) Boards of education of city, local, and exempted village school districts may acquire land by gift or devise, by purchase, or by appropriation. Lands purchased may be purchased for cash, by installment payments, with or without a mortgage, by entering into lease-purchase agreements, or by lease with an option to purchase, provided that if the purchase price is to be paid over a period of time, such payments shall not extend for a period of more than five years. A special tax levy may be authorized by the voters of the school district in accordance with section 5705.21 of the Revised Code to provide a special fund to meet the future time payments.

(2) For the purposes of section 5705.21 of the Revised Code, acquisition

of land under the provisions of this division shall be considered a necessary requirement of the school district.

(3) Boards of education of city, local, and exempted village school districts may acquire federal land at a discount by a lease-purchase agreement for use as a site for the construction of educational facilities or for other related purposes. External administrative and other costs pertaining to the acquisition of federal land at a discount may be paid from funds available to the school district for operating purposes. Such boards of education may also acquire federal land by lease-purchase agreements, by negotiation, or otherwise.

(4) As used in this division:

(a) "Office equipment" includes but is not limited to typewriters, copying and duplicating equipment, and computer and data processing equipment.

(b) "Software for instructional purposes" includes computer programs usable for computer assisted instruction, computer managed instruction, drill and practice, and problem simulations.

A board of education or governing board of an educational service center may acquire the necessary office equipment, and computer hardware and software for instructional purposes, for the schools under its control by purchase, by lease, by installment payments, by entering into lease-purchase agreements, or by lease with an option to purchase. In the case of a city, exempted village, or local school district, if the purchase price is to be paid over a period of time, the contract setting forth the terms of such purchase shall be considered a continuing contract pursuant to section 5705.41 of the Revised Code. Payments shall not extend for a period of more than five years. Costs relating to the acquisition of necessary apparatus may be paid from funds available to the school district or educational service center for operating purposes.

(5) A board of education or governing board of an educational service center may acquire the necessary equipment for the maintenance or physical upkeep of facilities and land under its control by entering into lease-purchase agreements. If payments under the lease-purchase agreement are to be made over a period of time, the agreement shall be considered a continuing contract pursuant to section 5705.41 of the Revised Code, and such payments shall not extend for a period of more than five years.

Sec. 3313.375. The board of education of a city, local, exempted village, or joint vocational school district or the governing board of an educational service center may enter into a lease-purchase agreement providing for construction; enlarging or other improvement, furnishing, and equipping;

lease; and eventual acquisition of a building or improvements to a building for any school district or educational service center purpose. The agreement shall provide for a lease for a series of one-year renewable lease terms totaling not more than thirty years. The agreement shall provide that at the end of the series of lease terms provided for in the agreement the title to the leased property shall be vested in the school district or educational service center, if all obligations of the school district or educational service center provided for in the agreement have been satisfied. The agreement may, in addition to the rental payments, require the school district or educational service center to pay the lessor a lump-sum amount as a condition of obtaining title to the leased property. In conjunction with the agreement, ~~the~~ a school district board of education or an educational service center governing board may grant leases, easements, or licenses for underlying land or facilities under the board's control for ~~like periods~~ terms not exceeding five years beyond the final renewal term of the lease-purchase agreement entered into pursuant to this section. Payments under the agreement may be deemed to be, and paid as, current operating expenses.

The obligations under a lease-purchase agreement entered into pursuant to this section shall not be considered to be net indebtedness of a school district under section 133.06 of the Revised Code.

Sec. 3318.31. (A) The Ohio school facilities commission may perform any act and ensure the performance of any function necessary or appropriate to carry out the purposes of, and exercise the powers granted under, Chapter 3318. of the Revised Code, including any of the following:

(1) Adopt, amend, and rescind, pursuant to section 111.15 of the Revised Code, rules for the administration of programs authorized under Chapter 3318. of the Revised Code.

(2) Contract with, retain the services of, or designate, and fix the compensation of, such agents, accountants, consultants, advisers, and other independent contractors as may be necessary or desirable to carry out the programs authorized under Chapter 3318. of the Revised Code.

(3) Receive and accept any gifts, grants, donations, and pledges, and receipts therefrom, to be used for the programs authorized under Chapter 3318. of the Revised Code.

(4) Make and enter into all contracts, commitments, and agreements, and execute all instruments, necessary or incidental to the performance of its duties and the execution of its rights and powers under Chapter 3318. of the Revised Code.

(B) The commission shall appoint and fix the compensation of an executive director who shall serve at the pleasure of the commission. The

executive director shall supervise the operations of the commission. The executive director also shall employ and fix the compensation of such employees as will facilitate the activities and purposes of the commission, who shall serve at the pleasure of the executive director. The employees of the commission shall be exempt from Chapter 4117. of the Revised Code and shall not be public employees as defined in section 4117.01 of the Revised Code.

(C) The attorney general shall serve as the legal representative for the commission and may appoint other counsel as necessary for that purpose in accordance with section 109.07 of the Revised Code.

~~Sec. 3353.07. On and after the effective date of this amendment, the Ohio educational telecommunications network commission shall operate the~~
(A) As used in this section, "broadcasting station" has the same meaning as in section 3353.01 of the Revised Code.

(B) Ohio government telecommunications shall be funded through the Ohio educational telecommunications network commission and shall be managed by a broadcasting station under a contract. The contract shall not take effect until the program committee of Ohio government telecommunications approves the contract. The broadcasting station shall manage the staff of Ohio government telecommunications.

(C)(1) There is hereby created the program committee of Ohio government telecommunications system that was operated by the capitol square review and advisory board prior to the effective date of this amendment shall consist of the president of the senate, speaker of the house of representatives, minority leader of the senate, and minority leader of the house of representatives, or their designees. By a vote of a majority of its members, the program committee may add additional members to the committee.

(2) The program committee shall adopt rules that govern the operation of Ohio government telecommunications and the coverage and distribution of official governmental activities by Ohio government telecommunications.

Sec. 3353.11. There is hereby created in the state treasury the governmental television/telecommunications operating fund. The fund shall consist of money received from contract productions of the Ohio government telecommunications studio and shall be used for operations or equipment breakdowns related to the studio. Only Ohio government telecommunications may authorize the spending of money in the fund. All investment earnings ~~on~~ of the fund shall be credited to the fund.

Sec. 3770.02. (A) Subject to the advice and consent of the senate, the governor shall appoint a director of the state lottery commission who shall

serve at the pleasure of the governor. The director shall devote full time to the duties of the office and shall hold no other office or employment. The director shall meet all requirements for appointment as a member of the commission and shall by experience and training possess ~~such~~ management skills ~~as~~ that would equip the director to administer an enterprise of the nature of a state lottery. The director shall receive an annual salary in accordance with pay range 48 of section 124.152 of the Revised Code.

(B)(1) The director shall attend all meetings of the commission and shall act as its secretary. The director shall keep a record of all commission proceedings and shall keep ~~such~~ the commission's records, files, and documents at the commission's principal office. All records of the commission's meetings shall be available for inspection by any member of the public, upon a showing of good cause and prior notification to the director.

(2) The director shall be the commission's executive officer and shall be responsible for keeping all commission records and supervising and administering the state lottery in accordance with this chapter, and carrying out all commission rules adopted under section 3770.03 of the Revised Code.

(C)(1) The director shall appoint an assistant director and deputy directors of marketing, operations, sales, finance, public relations, security, and administration, and as many regional managers as are required. The director may also appoint ~~such~~ necessary professional, technical, and clerical assistants ~~as are necessary~~. All such officers and employees shall be appointed and compensated pursuant to Chapter 124. of the Revised Code. Regional and assistant regional managers, sales representatives, and any lottery executive account representatives shall remain in the unclassified service.

(2) The director, in consultation with the director of administrative services, may establish standards of proficiency and productivity for commission field representatives.

(D) The director shall request the bureau of criminal identification and investigation, the department of public safety, or any other state, local, or federal agency; to supply the director with the criminal records of any job applicant and may periodically request ~~such~~ the criminal records of commission employees. At or prior to the time of making such a request, the director shall require a job applicant or commission employee to obtain fingerprint cards prescribed by the superintendent of the bureau of criminal identification and investigation at a qualified law enforcement agency, and the director shall cause these fingerprint cards to be forwarded to the bureau

of criminal identification and investigation and the federal bureau of investigation. The commission shall assume the cost of obtaining the fingerprint cards and shall pay to each agency supplying ~~such~~ criminal records for each investigation under this division a reasonable fee, as determined by the agency.

(E) The director shall license lottery sales agents pursuant to section 3770.05 of the Revised Code, and, when it is considered necessary, may revoke or suspend the license of any lottery sales agent ~~when such action is considered necessary~~.

(F) The director shall confer at least once each month with the commission at which time the director shall advise it ~~of~~ regarding the operation and administration of the lottery. The director shall make available at the request of the commission all documents, files, and other records pertaining to the operation and administration of the lottery. The director shall prepare and make available to the commission each month a complete and accurate accounting of lottery revenues, prize money disbursements and the cost of goods and services awarded as prizes, operating expenses, and all other relevant financial information, including an accounting of all transfers made from any lottery funds in the custody of the treasurer of state to benefit education.

(G) The director may enter into contracts for the operation or promotion of the lottery pursuant to Chapter 125. of the Revised Code. The director may enter into agreements to assist organizations that deal with problem gambling.

(H)(1) Pursuant to rules adopted by the commission under section 3770.03 of the Revised Code, the director shall require any lottery sales agents to either mail directly to the ~~state lottery~~ commission or to deposit to the credit of the state lottery fund, in banking institutions designated by the treasurer of state, net proceeds due the ~~lottery~~ commission as determined by the director, and to file with the director or the director's designee reports of their receipts and transactions in the sale of lottery tickets in ~~such~~ the form as required by the director.

(2) Pursuant to rules adopted by the commission under Chapter 119. of the Revised Code, the director may impose penalties for the failure of a sales agent to transfer funds to the commission in a timely manner. Penalties may include monetary penalties, immediate suspension or revocation of a license, or any other penalty the commission adopts by rule.

(I) The director may arrange for any person, or any banking institution, to perform ~~such~~ functions and services in connection with the operation of the lottery as the director may consider necessary to carry out this chapter.

(J)(1) As used in this chapter, "statewide joint lottery game" means a lottery game that the commission sells solely within this state under an agreement with other lottery jurisdictions to sell the same lottery game solely within their statewide or other jurisdictional boundaries.

(2) If the governor directs the director to do so, the director shall enter into an agreement with other lottery jurisdictions to conduct statewide joint lottery games. If the governor signs the agreement personally or by means of an authenticating officer pursuant to section 107.15 of the Revised Code, the director then may conduct statewide joint lottery games under the agreement.

(3) The entire net proceeds from any statewide joint lottery games shall be used to fund elementary, secondary, vocational, and special education programs in this state.

(4) The commission shall conduct any statewide joint lottery games in accordance with rules it adopts under division (B)(5) of section 3770.03 of the Revised Code.

Sec. 3770.03. (A) The state lottery commission shall promulgate rules under which a statewide lottery may be conducted. The rules shall be promulgated pursuant to Chapter 119. of the Revised Code, except that ~~rules pertaining to~~ instant game rules shall be promulgated pursuant to section 111.15 of the Revised Code but are not subject to division (D) of that section. Subjects covered in ~~such~~ these rules shall include, but need not be limited to, the following:

- (1) The type of lottery to be conducted;
- (2) The prices of tickets in the lottery;
- (3) The number, nature, and value of prize awards, the manner and frequency of prize drawings, and the manner in which prizes shall be awarded to holders of winning tickets.

(B) The commission shall promulgate ~~further~~ rules, in addition to those described in division (A) of this section, pursuant to Chapter 119. of the Revised Code under which a statewide lottery and statewide joint lottery games may be conducted. Subjects covered in these rules shall include, but not be limited to, the following:

- (1) The locations at which lottery tickets may be sold and the manner in which they are to be sold. ~~Such~~ These rules may authorize the sale of lottery tickets by commission personnel or other licensed individuals from traveling show wagons at the state fair, and at any other expositions the director of the commission considers acceptable. ~~Such~~ These rules shall prohibit commission personnel or other licensed individuals from soliciting from an exposition the right to sell lottery tickets at that exposition, but shall allow

commission personnel or other licensed individuals to sell lottery tickets at an exposition if the exposition requests commission personnel or licensed individuals to do so. ~~Such~~ These rules may also address the accessibility of sales agent locations to commission products in accordance with the "Americans with Disabilities Act of 1990," 104 Stat. 327, 42 U.S.C.A. 12101 et seq.

(2) The manner in which lottery sales revenues are to be collected, including authorization for the director to impose penalties for failure by lottery sales agents to transfer revenues to the commission in a timely manner;

(3) The amount of compensation to be paid licensed lottery sales agents;

(4) The substantive criteria for the licensing of lottery sales agents consistent with section 3770.05 of the Revised Code, and procedures for revoking or suspending ~~such~~ their licenses consistent with Chapter 119. of the Revised Code. If circumstances, such as the nonpayment of funds owed by a lottery sales agent, or other circumstances related to the public safety, convenience, or trust, require immediate action, the director may suspend a license without affording an opportunity for a prior hearing under section 119.07 of the Revised Code.

(5) Special game rules to implement any agreements signed by the governor that the director enters into with other lottery jurisdictions under division (J) of section 3770.02 of the Revised Code to conduct statewide joint lottery games. The rules shall require that the entire net proceeds of those games that remain, after associated operating expenses, prize disbursements, lottery sales agent bonuses, commissions, and reimbursements, and any other expenses necessary to comply with the agreements or the rules are deducted from the gross proceeds of those games, be transferred to the lottery profits education fund under division (B) of section 3770.06 of the Revised Code.

(C)(1) The ~~state lottery~~ commission shall meet with the director ~~of the commission~~ at least once each month and shall convene other meetings at the request of the ~~chairman~~ chairperson or any five of the members. No action taken by the commission shall be binding unless at least five of the members present vote in favor ~~thereof~~ of the action. A written record shall be made of the proceedings of each meeting and shall be transmitted forthwith to the governor, the president of the senate, the senate minority leader, the speaker of the house of representatives, and the house minority leader.

(2) The director shall present to the commission a report each month, showing the total revenues, prize disbursements, and operating expenses of

the state lottery for the preceding month. As soon as practicable after the end of each fiscal year, the commission shall prepare and transmit to the governor and the general assembly a report of lottery revenues, prize disbursements, and operating expenses for the preceding fiscal year and any recommendations for legislation considered necessary by the commission.

Sec. 3770.06. (A) There is hereby created the state lottery gross revenue fund, which shall be in the custody of the treasurer of state but shall not be part of the state treasury. All gross revenues received from sales of lottery tickets, fines, fees, and related proceeds in connection with the statewide lottery and all gross proceeds from statewide joint lottery games shall be deposited into the fund. The treasurer of state shall invest any portion of the fund not needed for immediate use in the same manner as, and subject to all provisions of law with respect to the investment of, state funds. The treasurer of state shall disburse money from the fund on order of the director of the state lottery commission or the director's designee. ~~All~~

Except for gross proceeds from statewide joint lottery games, all revenues of the state lottery gross revenue fund that are not paid to holders of winning lottery tickets, that are not required to meet short-term prize liabilities, that are not paid credited to lottery sales agents in the form of bonuses, commissions, or reimbursements, and that are not paid to financial institutions to reimburse those institutions for sales agent nonsufficient funds, and that are collected from sales agents for remittance to insurers under contract to provide sales agent bonding services shall be transferred to the state lottery fund, which is hereby created in the state treasury. In addition, all revenues of the state lottery gross revenue fund that represent the gross proceeds from the statewide joint lottery games and that are not paid to holders of winning lottery tickets, that are not required to meet short-term prize liabilities, that are not credited to lottery sales agents in the form of bonuses, commissions, or reimbursements, and that are not necessary to cover operating expenses associated with those games or to otherwise comply with the agreements signed by the governor that the director enters into under division (J) of section 3770.02 of the Revised Code or the rules the commission adopts under division (B)(5) of section 3770.03 of the Revised Code shall be transferred to the state lottery fund. All investment earnings of the fund shall be credited to the fund. Moneys shall be disbursed from the fund pursuant to vouchers approved by the director. Total disbursements for monetary prize awards to holders of winning lottery tickets in connection with the statewide lottery and purchases of goods and services awarded as prizes to holders of winning lottery tickets shall be of an amount equal to at least fifty per cent of the

total revenue accruing from the sale of lottery tickets.

(B) Pursuant to Section 6 of Article XV, Ohio Constitution, there is hereby established in the state treasury the lottery profits education fund. Whenever, in the judgment of the director of budget and management, the amount to the credit of the state lottery fund that does not represent proceeds from statewide joint lottery games is in excess of that needed to meet the maturing obligations of the commission and as working capital for its further operations, the director shall transfer the excess to the lottery profits education fund in connection with the statewide lottery. Investment earnings of the lottery profits education fund shall be credited to the fund. In addition, whenever, in the judgment of the director of budget and management, the amount to the credit of the state lottery fund that represents proceeds from statewide joint lottery games equals the entire net proceeds of those games as described in division (B)(5) of section 3770.03 of the Revised Code and the rules adopted under that division, the director shall transfer those proceeds to the lottery profits education fund. There shall also be credited to the fund any repayments of moneys loaned from the educational excellence investment fund. The Investment earnings of the lottery profits education fund shall be credited to the fund.

The lottery profits education fund shall be used solely for the support of elementary, secondary, vocational, and special education programs as determined in appropriations made by the general assembly, or as provided in applicable bond proceedings for the payment of debt service on obligations issued to pay costs of capital facilities, including those for a system of common schools throughout the state pursuant to section 2n of Article VIII, Ohio Constitution. When determining the availability of money in the lottery profits education fund, the director of budget and management may consider all balances and estimated revenues of the fund.

From the amounts that the director of budget and management transfers in any fiscal year from the state lottery fund to the lottery profits education fund, the director shall transfer the initial ten million dollars of those amounts from the lottery profits education fund to the school building program bond service fund created in division (Q) of section 3318.26 of the Revised Code to be pledged for the purpose of paying bond service charges as defined in division (C) of section 3318.21 of the Revised Code on one or more issuances of obligations, which obligations are issued to provide moneys for the school building program assistance fund created in section 3318.25 of the Revised Code.

(C) There is hereby established in the state treasury the deferred prizes trust fund. With the approval of the director of budget and management, an

amount sufficient to fund annuity prizes shall be transferred from the state lottery fund and credited to the trust fund. The treasurer of state shall credit all earnings arising from investments purchased under this division to the trust fund. Within sixty days after the end of each fiscal year, the director of budget and management shall certify the amount of investment earnings necessary to have been credited to the trust fund during the fiscal year just ending to provide for continued funding of deferred prizes. Any earnings credited in excess of this certified amount shall be transferred to the lottery profits education fund. ~~To~~

To provide all or a part of the amounts necessary to fund deferred prizes awarded by the commission in connection with the statewide lottery, the treasurer of state, in consultation with the commission, may invest moneys contained in the deferred prizes trust fund which represents proceeds from the statewide lottery in obligations of the type permitted for the investment of state funds but whose maturities are thirty years or less. Notwithstanding the requirements of any other section of the Revised Code, to provide all or part of the amounts necessary to fund deferred prizes awarded by the commission in connection with statewide joint lottery games, the treasurer of state, in consultation with the commission, may invest moneys in the trust fund which represent proceeds derived from the statewide joint lottery games in accordance with the rules the commission adopts under division (B) (5) of section 3770.03 of the Revised Code. Investments of the ~~deferred prizes~~ trust fund are not subject to the provisions of division (A)(10) of section 135.143 of the Revised Code limiting to five per cent the amount of the state's total average portfolio that may be invested in debt interests and limiting to one-half of one per cent the amount that may be invested in debt interests of a single issuer.

All purchases made under this division shall be effected on a delivery versus payment method and shall be in the custody of the treasurer of state.

The treasurer of state may retain an investment advisor, if necessary. The commission shall pay any costs incurred by the treasurer of state in retaining an investment advisor.

(D) The auditor of state shall conduct annual audits of all funds and any other audits as the auditor of state or the general assembly considers necessary. The auditor of state may examine all records, files, and other documents of the commission, and records of lottery sales agents that pertain to their activities as agents, for purposes of conducting authorized audits.

The state lottery commission shall establish an internal audit program before the beginning of each fiscal year, subject to the approval of the

auditor of state. At the end of each fiscal year, the commission shall prepare and submit an annual report to the auditor of state for the auditor of state's review and approval, specifying the internal audit work completed by the end of that fiscal year and reporting on compliance with the annual internal audit program. The form and content of the report shall be prescribed by the auditor of state under division (C) of section 117.20 of the Revised Code.

(E) Whenever, in the judgment of the director of budget and management, an amount of net state lottery proceeds is necessary to be applied to the payment of debt service on obligations, all as defined in sections 151.01 and 151.03 of the Revised Code, the director shall transfer that amount directly from the state lottery fund or from the lottery profits education fund to the bond service fund defined in those sections. The provisions of this division are subject to any prior pledges or obligation of those amounts to the payment of bond service charges as defined in division (C) of section 3318.21 of the Revised Code, as referred to in division (B) of this section.

Sec. 5111.34. (A) There is hereby created the nursing facility reimbursement study council consisting of the following ~~fifteen~~ seventeen members:

- (1) The director of job and family services;
- (2) The deputy director of the office of Ohio health plans of the department of job and family services;
- (3) An employee of the governor's office;
- (4) The director of health;
- (5) The director of aging;
- (6) ~~Two~~ Three members of the house of representatives, not more than two of whom are members of the same political party, appointed by the speaker of the house of representatives;
- (7) ~~Two~~ Three members of the senate, not more than two of whom are members of the same political party, appointed by the president of the senate;
- (8) Two representatives of each of the following organizations, appointed by their respective governing bodies:
 - (a) The Ohio academy of nursing homes;
 - (b) The association of Ohio philanthropic homes and housing for the aging;
 - (c) The Ohio health care association.

Initial appointments of members described in divisions (A)(6), (7), and (8) of this section shall be made no later than ninety days after ~~the effective date of this section~~ June 6, 2001, except that the initial appointments of the

two additional members described in divisions (A)(6) and (7) of this section added by Sub. H.B. 405 of the 124th general assembly shall be made not later than ninety days after the effective date of this amendment. Vacancies in any of those appointments shall be filled in the same manner as original appointments. The members described in divisions (A)(6), (7), and (8) of this section shall serve at the pleasure of the official or governing body appointing the member. The members described in divisions (A)(1), (2), (3), (4), and (5) of this section shall serve for as long as they hold the position that qualifies them for membership on the council. The speaker of the house of representatives and the president of the senate jointly shall appoint the chairperson of the council. Members of the council shall serve without compensation.

(B) The council shall review, on an ongoing basis, the system established by sections 5111.20 to 5111.32 of the Revised Code for reimbursing nursing facilities under the medical assistance program. The council shall recommend any changes it determines are necessary. The council periodically shall report its activities, findings, and recommendations to the governor, the speaker of the house of representatives, and the president of the senate.

Sec. 5111.872. When the department of mental retardation and developmental disabilities allocates enrollment numbers to a county board of mental retardation and developmental disabilities for home and community-based services provided under the component of the medicaid program that the department administers under section 5111.871 of the Revised Code, the department shall consider all of the following:

(A) The number of individuals with mental retardation or other developmental disability who are on a waiting list the county board establishes under division (C) of section 5126.042 of the Revised Code for those services and are given priority on the waiting list pursuant to division (D) of that section;

(B) The implementation component required by division (A)~~(3)~~(4) of section 5126.054 of the Revised Code of the county board's plan approved under section 5123.046 of the Revised Code;

(C) Anything else the department considers necessary to enable county boards to provide those services to individuals in accordance with the priority requirements of division (D) of section 5126.042 of the Revised Code.

Sec. 5123.043. (A) The director of mental retardation and developmental disabilities shall adopt rules establishing procedures for administrative resolution of complaints filed under division (B) of this

section and section 5126.06 of the Revised Code. The rules shall be adopted in accordance with Chapter 119. of the Revised Code.

(B) Except as provided in division (C) of this section, any person ~~who~~ or county board of mental retardation and developmental disabilities that has a complaint involving any of the programs, services, policies, or administrative practices of the department of mental retardation and developmental disabilities or any of the entities under contract with the department, may file a complaint with the department. Prior to commencing a civil action regarding the complaint, a person or county board shall attempt to have the complaint resolved through the administrative resolution process established in the rules adopted under this section. After exhausting the administrative resolution process, the person or county board may commence a civil action if the complaint is not settled to the person's or county board's satisfaction.

(C) An employee of the department may not file under this section a complaint related to the terms and conditions of employment for the employee.

(D) This section does not apply to a conflict between a county board of mental retardation and developmental disabilities and a person or government entity that provides or seeks to provide services to an individual with mental retardation or other developmental disability. Section 5126.036 of the Revised Code applies to such a conflict.

Sec. 5123.046. The department of mental retardation and developmental disabilities shall review each component of the three-calendar year plan it receives from a county board of mental retardation and developmental disabilities under section 5126.054 of the Revised Code and, in consultation with the department of job and family services and office of budget and management, approve each ~~plan~~ component that includes all the information and conditions specified in that section. ~~A~~ The fourth component of the plan shall be approved or disapproved not later than forty-five days after the ~~last of the plan's components are~~ fourth component is submitted to the department under division (B)(3) of section 5126.054 of the Revised Code. If the department approves all four components of the plan, the plan is approved. Otherwise, the plan is disapproved. If the plan is disapproved, the department shall take action against the county board under division (B) of section 5126.056 of the Revised Code.

In approving plans under this section, the department shall ensure that the aggregate of all plans provide for the increased enrollment into home and community-based services during each state fiscal year of at least five hundred individuals who did not receive residential services, supported

ving, or home and community-based services the prior state fiscal year if the department has enough additional enrollment available for this purpose.

~~If a county board fails to submit all the components of the plan to the department within the time required by division (B) of section 5126.054 of the Revised Code or the department disapproves a county board's plan, the department may withhold all or part of any funds the department would otherwise allocate to the county board. The department may not withhold any funds the department allocates to the county board prior to the date the last of the plan's components are due or the department disapproves the plan.~~

The department shall establish protocols that the department shall use to determine whether a county board is complying with the programmatic and financial accountability mechanisms and achieving outcomes specified in its approved plan. If the department determines that a county board is not in compliance with the mechanisms or achieving the outcomes specified in its approved plan, the department may take action under division (G) of section 5126.055 of the Revised Code.

Sec. 5123.048. (A) For state fiscal year 2002, the department of mental retardation and developmental disabilities shall assign to a county board of mental retardation and developmental disabilities the nonfederal share of medicaid expenditures for habilitation center services that a private habilitation center provides if all of the following apply:

(1) The individuals who receive the services also received the services from the center pursuant to a contract the center had with the department in state fiscal year 2001;

(2) The county board determined under section 5126.041 of the Revised Code that the individuals who receive the services are eligible for county board services;

(3) The county board contracts with the center to provide the services after the center's contract with the department ends.

(B) The department shall also make the assignment under division (A) of this section for each successive state fiscal year that the county board contracts with the private habilitation center to provide the habilitation center services to the individuals who received the services pursuant to the contract the department had with the center in state fiscal year 2001.

(C) The amount the department shall assign under divisions (A) and (B) of this section shall ~~be adequate to ensure that the habilitation center services the individuals receive are comparable in scope to the habilitation center services they received when the private habilitation center was under contract with the department. The amount that the department assigns shall~~

not be less than the amount the department paid the private habilitation center for ~~the individuals under~~ each individual who received the habilitation center services pursuant to the contract the department had with the center in fiscal year 2001. If the contract the department had with the private habilitation center in fiscal year 2001 was for less than the entire fiscal year, the amount the department shall assign shall be not less than the amount the department would have paid the center for each individual who received the services pursuant to the contract had the contract been for the entire fiscal year.

(D) A county board shall use the assignment it receives under divisions (A) and (B) of this section to pay the nonfederal share of the medicaid expenditures for the habilitation center services the county board is required by division (D) of section 5111.041 of the Revised Code to pay.

Sec. 5123.049. The director of mental retardation and developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code governing the authorization and payment of home and community-based services, medicaid case management services, and habilitation center services. The rules shall provide for private providers of the services to receive one hundred per cent of the medicaid allowable payment amount and for government providers of the services to receive the federal share of the medicaid allowable payment, less the amount withheld as a fee under section 5123.0412 of the Revised Code and any amount that may be required by rules adopted under section 5123.0413 of the Revised Code to be deposited into the state MR/DD risk fund. The rules shall establish the process by which county boards of mental retardation and developmental disabilities shall certify and provide the nonfederal share of medicaid expenditures that the county board is required by division (A) of section ~~5126.056~~ 5126.057 of the Revised Code to pay. The process shall require a county board to certify that the county board has funding available at one time for two months costs for those expenditures. The process may permit a county board to certify that the county board has funding available at one time for more than two months costs for those expenditures.

Sec. 5123.0411. The department of mental retardation and developmental disabilities may bring a mandamus action against a county board of mental retardation and developmental disabilities that fails to pay the nonfederal share of medicaid expenditures that the county board is required by division (A) of section ~~5126.056~~ 5126.057 of the Revised Code to pay. The department may bring the mandamus action in the court of common pleas of the county served by the county board or in the Franklin county court of common pleas.

Sec. 5126.01. As used in this chapter:

(A) As used in this division, "adult" means an individual who is eighteen years of age or over and not enrolled in a program or service under Chapter 3323. of the Revised Code and an individual sixteen or seventeen years of age who is eligible for adult services under rules adopted by the director of mental retardation and developmental disabilities pursuant to Chapter 119. of the Revised Code.

(1) "Adult services" means services provided to an adult outside the home, except when they are provided within the home according to an individual's assessed needs and identified in an individual service plan, that support learning and assistance in the area of self-care, sensory and motor development, socialization, daily living skills, communication, community living, social skills, or vocational skills.

(2) "Adult services" includes all of the following:

(a) Adult day habilitation services;

(b) Adult day care;

(c) Prevocational services;

(d) Sheltered employment;

(e) Educational experiences and training obtained through entities and activities that are not expressly intended for individuals with mental retardation and developmental disabilities, including trade schools, vocational or technical schools, adult education, job exploration and sampling, unpaid work experience in the community, volunteer activities, and spectator sports-

~~(3) "Adult services" does not include community or;~~

(f) Community employment services and supported employment services.

(B)(1) "Adult day habilitation services" means adult services that do the following:

(a) Provide access to and participation in typical activities and functions of community life that are desired and chosen by the general population, including such activities and functions as opportunities to experience and participate in community exploration, companionship with friends and peers, leisure activities, hobbies, maintaining family contacts, community events, and activities where individuals without disabilities are involved;

(b) Provide supports or a combination of training and supports that afford an individual a wide variety of opportunities to facilitate and build relationships and social supports in the community.

(2) "Adult day habilitation services" includes all of the following:

(a) Personal care services needed to ensure an individual's ability to

experience and participate in vocational services, educational services, community activities, and any other adult day habilitation services;

(b) Skilled services provided while receiving adult day habilitation services, including such skilled services as behavior management intervention, occupational therapy, speech and language therapy, physical therapy, and nursing services;

(c) Training and education in self-determination designed to help the individual do one or more of the following: develop self-advocacy skills, exercise the individual's civil rights, acquire skills that enable the individual to exercise control and responsibility over the services received, and acquire skills that enable the individual to become more independent, integrated, or productive in the community;

(d) Recreational and leisure activities identified in the individual's service plan as therapeutic in nature or assistive in developing or maintaining social supports;

(e) Counseling and assistance provided to obtain housing, including such counseling as identifying options for either rental or purchase, identifying financial resources, assessing needs for environmental modifications, locating housing, and planning for ongoing management and maintenance of the housing selected;

(f) Transportation necessary to access adult day habilitation services;

(g) Habilitation management, as described in section 5126.14 of the Revised Code.

(3) "Adult day habilitation services" does not include activities that are components of the provision of residential services, family support services, or supported living services.

(C) "Community employment services" or "supported employment services" means job training and other services related to employment outside a sheltered workshop. "Community employment services" or "supported employment services" include all of the following:

(1) Job training resulting in the attainment of competitive work, supported work in a typical work environment, or self-employment;

(2) Supervised work experience through an employer paid to provide the supervised work experience;

(3) Ongoing work in a competitive work environment at a wage commensurate with workers without disabilities;

(4) Ongoing supervision by an employer paid to provide the supervision.

(D) As used in this division, "substantial functional limitation," "developmental delay," and "established risk" have the meanings established

pursuant to section 5123.011 of the Revised Code.

"Developmental disability" means a severe, chronic disability that is characterized by all of the following:

(1) It is attributable to a mental or physical impairment or a combination of mental and physical impairments, other than a mental or physical impairment solely caused by mental illness as defined in division (A) of section 5122.01 of the Revised Code;

(2) It is manifested before age twenty-two;

(3) It is likely to continue indefinitely;

(4) It results in one of the following:

(a) In the case of a person under age three, at least one developmental delay or an established risk;

(b) In the case of a person at least age three but under age six, at least two developmental delays or an established risk;

(c) In the case of a person age six or older, a substantial functional limitation in at least three of the following areas of major life activity, as appropriate for the person's age: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and, if the person is at least age sixteen, capacity for economic self-sufficiency.

(5) It causes the person to need a combination and sequence of special, interdisciplinary, or other type of care, treatment, or provision of services for an extended period of time that is individually planned and coordinated for the person.

(E) "Early childhood services" means a planned program of habilitation designed to meet the needs of individuals with mental retardation or other developmental disabilities who have not attained compulsory school age.

(F)(1) "Environmental modifications" means the physical adaptations to an individual's home, specified in the individual's service plan, that are necessary to ensure the individual's health, safety, and welfare or that enable the individual to function with greater independence in the home, and without which the individual would require institutionalization.

(2) "Environmental modifications" includes such adaptations as installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, and installation of specialized electric and plumbing systems necessary to accommodate the individual's medical equipment and supplies.

(3) "Environmental modifications" does not include physical adaptations or improvements to the home that are of general utility or not of direct medical or remedial benefit to the individual, including such

adaptations or improvements as carpeting, roof repair, and central air conditioning.

(G) "Family support services" means the services provided under a family support services program operated under section 5126.11 of the Revised Code.

(H) "Habilitation" means the process by which the staff of the facility or agency assists an individual with mental retardation or other developmental disability in acquiring and maintaining those life skills that enable the individual to cope more effectively with the demands of the individual's own person and environment, and in raising the level of the individual's personal, physical, mental, social, and vocational efficiency. Habilitation includes, but is not limited to, programs of formal, structured education and training.

(I) "Habilitation center services" means services provided by a habilitation center certified by the department of mental retardation and developmental disabilities under section 5123.041 of the Revised Code and covered by the medicaid program pursuant to rules adopted under section 5111.041 of the Revised Code.

(J) "Home and community-based services" means medicaid-funded home and community-based services provided under a medicaid component the department of mental retardation and developmental disabilities administers pursuant to section 5111.871 of the Revised Code.

(K) "Medicaid" has the same meaning as in section 5111.01 of the Revised Code.

(L) "Medicaid case management services" means case management services provided to an individual with mental retardation or other developmental disability that the state medicaid plan requires.

(M) "Mental retardation" means a mental impairment manifested during the developmental period characterized by significantly subaverage general intellectual functioning existing concurrently with deficiencies in the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of the individual's age and cultural group.

(N) "Residential services" means services to individuals with mental retardation or other developmental disabilities to provide housing, food, clothing, habilitation, staff support, and related support services necessary for the health, safety, and welfare of the individuals and the advancement of their quality of life. "Residential services" includes program management, as described in section 5126.14 of the Revised Code.

(O) "Resources" means available capital and other assets, including

moneys received from the federal, state, and local governments, private grants, and donations; appropriately qualified personnel; and appropriate capital facilities and equipment.

(P) "Service and support administration" means the duties performed by a service and support administrator pursuant to section 5126.15 of the Revised Code.

(Q)(1) "Specialized medical, adaptive, and assistive equipment, supplies, and supports" means equipment, supplies, and supports that enable an individual to increase the ability to perform activities of daily living or to perceive, control, or communicate within the environment.

(2) "Specialized medical, adaptive, and assistive equipment, supplies, and supports" includes the following:

(a) Eating utensils, adaptive feeding dishes, plate guards, mylatex straps, hand splints, reaches, feeder seats, adjustable pointer sticks, interpreter services, telecommunication devices for the deaf, computerized communications boards, other communication devices, support animals, veterinary care for support animals, adaptive beds, supine boards, prone boards, wedges, sand bags, sidelayers, bolsters, adaptive electrical switches, hand-held shower heads, air conditioners, humidifiers, emergency response systems, folding shopping carts, vehicle lifts, vehicle hand controls, other adaptations of vehicles for accessibility, and repair of the equipment received.

(b) Nondisposable items not covered by medicaid that are intended to assist an individual in activities of daily living or instrumental activities of daily living.

(R) "Supportive home services" means a range of services to families of individuals with mental retardation or other developmental disabilities to develop and maintain increased acceptance and understanding of such persons, increased ability of family members to teach the person, better coordination between school and home, skills in performing specific therapeutic and management techniques, and ability to cope with specific situations.

(S)(1) "Supported living" means services provided for as long as twenty-four hours a day to an individual with mental retardation or other developmental disability through any public or private resources, including moneys from the individual, that enhance the individual's reputation in community life and advance the individual's quality of life by doing the following:

(a) Providing the support necessary to enable an individual to live in a residence of the individual's choice, with any number of individuals who are

not disabled, or with not more than three individuals with mental retardation and developmental disabilities unless the individuals are related by blood or marriage;

(b) Encouraging the individual's participation in the community;

(c) Promoting the individual's rights and autonomy;

(d) Assisting the individual in acquiring, retaining, and improving the skills and competence necessary to live successfully in the individual's residence.

(2) "Supported living" includes the provision of all of the following:

(a) Housing, food, clothing, habilitation, staff support, professional services, and any related support services necessary to ensure the health, safety, and welfare of the individual receiving the services;

(b) A combination of life-long or extended-duration supervision, training, and other services essential to daily living, including assessment and evaluation and assistance with the cost of training materials, transportation, fees, and supplies;

(c) Personal care services and homemaker services;

(d) Household maintenance that does not include modifications to the physical structure of the residence;

(e) Respite care services;

(f) Program management, as described in section 5126.14 of the Revised Code.

Sec. 5126.02. (A) As used in this section, "relative" means a spouse, parent, parent-in-law, sibling, sibling-in-law, child, child-in-law, grandparent, aunt, or uncle.

(B)(1) There is hereby created in each county a county board of mental retardation and developmental disabilities consisting of seven members, five of whom shall be appointed by the board of county commissioners of the county, and two of whom shall be appointed by the probate judge of the county. Each member shall be a resident of the county. The membership of the board shall, as nearly as possible, reflect the composition of the population of the county.

All board members shall be persons interested and knowledgeable in the field of mental retardation and other allied fields. All board members shall be citizens of the United States. Of the members appointed by the board of county commissioners, at least two shall be relatives ~~by blood or marriage~~ of persons eligible for ~~and currently receiving~~ services provided by the county board of mental retardation and developmental disabilities, and, whenever possible, one shall be a relative of a person eligible for ~~and currently receiving~~ adult services, and the other shall be a relative of a person eligible

for ~~and currently receiving~~ early intervention services or services for pre-school or school-age children. Of the two members appointed by the probate judge, at least one shall be a relative ~~by blood or marriage~~ of a person eligible for ~~or currently receiving~~ residential services in a ~~public or private residential facility subject to regulation or licensure by the director of mental retardation and developmental disabilities under sections 5123.19 and 5123.20 of the Revised Code~~ or supported living.

Both the board of county commissioners and the probate judge shall appoint under this section, to the maximum extent possible, members who fulfill any applicable requirements of this section for appointment and who also have professional training and experience in business management, finance, law, health care practice, personnel administration, or government service.

(2) All appointments shall be for terms of four years. The membership of a person appointed as a relative of a recipient of services shall not be terminated because the services are no longer received.

Members may be reappointed, except as provided in division ~~(A)~~(B)(3) of this section and section 5126.022 of the Revised Code. Prior to making a reappointment, the appointing authority shall ascertain, through written communication with the board, that the member being considered for reappointment meets the requirements of this section and section 5126.022 of the Revised Code.

(3) A member who has served during each of ~~two~~ three consecutive terms shall not be reappointed for a subsequent term until ~~one year~~ two years after ceasing to be a member of the board, except that a member who has served for ~~six~~ ten years or less within ~~two~~ three consecutive terms may be reappointed for a subsequent term before becoming ineligible for reappointment for ~~one year~~ two years.

(4) Within sixty days after a vacancy occurs, it shall be filled by the appointing authority for the unexpired term. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of that term. Appointment other than appointment to fill a vacancy shall be made no later than the last day of November of each year, and the term of office shall commence on the date of the stated annual organizational meeting in January.

(5) Board members shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the conduct of board business, including those incurred within the county of residence.

~~(B)~~(C) Each year each board member shall attend at least one in-service

training session provided by or approved by the department of mental retardation and developmental disabilities. These training sessions shall not be considered regularly scheduled meetings of the board.

~~(C)~~(D) A county board of mental retardation and developmental disabilities shall be operated as a separate administrative and service entity. The board's functions shall not be combined with the functions of any other entity of county government.

Sec. 5126.021. As used in this section, "immediate family" means parents, brothers, sisters, spouses, sons, daughters, mothers-in-law, fathers-in-law, brothers-in-law, sisters-in-law, sons-in-law, and daughters-in-law.

(A) The following individuals shall not serve as members of county boards of mental retardation and developmental disabilities:

(1) Elected public officials, except for township trustees, township clerks, and those excluded from the definition of public official or employee in division (B) of section 102.01 of the Revised Code;

(2) Members of the immediate family of another board member;

(3) Board employees and members of the immediate family of board employees;

(4) Former board employees within one calendar year of the termination of employment with the board on which the former employee would serve.

(B) A person may not serve as a member of a county board of mental retardation and developmental disabilities when either the person or a member of the person's immediate family is a board member of a contract agency of that county board unless there is no conflict of interest. In no circumstance shall a member of a county board vote on any matter before the board concerning a contract agency of which the member or a member of the member's immediate family is also a board member or an employee. All questions relating to the existence of a conflict of interest shall be submitted to the local prosecuting attorney and the Ohio ethics commission for resolution.

(C) No employee of an agency contracting with a county board of mental retardation and developmental disabilities or member of the immediate family of such an employee shall serve as a board member or an employee of the county board except that a county board may, pursuant to a resolution adopted by the board, employ a member of the immediate family of an employee of an agency contracting with the board.

(D) No person shall serve as a member or employee of a county board of mental retardation and developmental disabilities if a member of the person's immediate family serves as a county commissioner of the county

served by the board unless the person was a member or employee prior to October 31, 1980.

(E) A county board of mental retardation and developmental disabilities shall not contract with an agency whose board includes a county commissioner of the county served by the county board or an employee of the same county board.

Sec. 5126.033. (A) A county board of mental retardation and developmental disabilities shall not enter into a direct services contract unless the contract is limited either to the actual amount of the expenses or to a reasonable and allowable amount projected by the board.

(B) A county board shall not enter into a direct services contract that would result in payment to a board member, former board member, employee, former employee, or member of the immediate family of a board member, former board member, employee, or former employee if the person who would receive services under the contract stands to receive any preferential treatment or any unfair advantage over other eligible persons.

(C) A county board shall not enter into a direct services contract for services provided in accordance with section 5126.11 or sections 5126.40 to 5126.46 of the Revised Code under which an individual, agency, or other entity will employ a management employee, professional employee, or service employee, as defined in section 5126.20 of the Revised Code, who is also an employee of that board unless all of the following conditions are met:

(1) The employee is not in a capacity to influence the award of the contract.

(2) The employee has not attempted in any manner to secure the contract on behalf of the individual, agency, or other entity.

(3) The employee is not in management level two or three according to rules adopted by the director of mental retardation and developmental disabilities.

~~(4) The employee does is not hold any administrative or supervisory position in the employ of~~ employed by the board, ~~did not hold such a position~~ during the period when the contract ~~was~~ is developed, as an administrator or supervisor responsible for approving or supervising services to be provided under the contract and agrees not to take such a position while the contract is in effect, regardless of whether the position is related to the services provided under the contract.

~~(4)(5)~~ The employee has not taken any actions that create the need for the services to be provided under the contract.

~~(5)(6)~~ The individual, agency, or other entity seeks the services of the

employee because of the employee's expertise and familiarity with the care and condition of one or more eligible persons and other individuals with such expertise and familiarity are unavailable, or an eligible person has requested to have the services provided by that employee.

The superintendent of the county board shall notify the employee and the individual, agency, or other entity that seeks the employee's services of the ethics council's determination under section 5126.032 of the Revised Code regarding the contract. The council's determination shall be binding on all parties.

The employee who is the subject of the contract shall inform the superintendent of the county board of any employment the employee has outside the county board that is with any individual, agency, or other entity that has a contract with the county board.

Sec. 5126.035. (A) As used in this section:

(1) "Provider" means a person or government entity that provides services to an individual with mental retardation or other developmental disability pursuant to a service contract.

(2) "Service contract" means a contract between a county board of mental retardation and developmental disabilities and a provider under which the provider is to provide services to an individual with mental retardation or other developmental disability.

(B) Each service contract that a county board of mental retardation and developmental disabilities enters into with a provider shall do all of the following:

(1) Comply with rules adopted under division (E) of this section;

(2) If the provider is to provide home and community-based services, medicaid case management services, or habilitation center services, comply with all applicable statewide medicaid requirements;

(3) Include a general operating agreement component and an individual service needs addendum.

(C) The general operating agreement component shall include all of the following:

(1) The roles and responsibilities of the county board regarding services for individuals with mental retardation or other developmental disability who reside in the county the county board serves;

(2) The roles and responsibilities of the provider as specified in the individual service needs addendum;

(3) Procedures for the county board to monitor the provider's services;

(4) Procedures for the county board to evaluate the quality of care and cost effectiveness of the provider's services;

- (5) Procedures for payment of eligible claims;
- (6) If the provider is to provide home and community-based services, medicaid case management services, or habilitation center services, both of the following:
 - (a) Procedures for reimbursement that conform to the statewide reimbursement process and the county board's plan submitted under section 5126.054 of the Revised Code;
 - (b) Procedures that ensure that the county board pays the nonfederal share of the medicaid expenditures that the county board is required by division (A) of section ~~5126.056~~ 5126.057 of the Revised Code to pay.
- (7) Procedures for the county board to perform service utilization reviews and the implementation of required corrective actions;
- (8) Procedures for the provider to submit claims for payment for a service no later than three hundred thirty days after the date the service is provided;
- (9) Procedures for rejecting claims for payment that are submitted after the time required by division (B)(9) of this section;
- (10) Procedures for developing, modifying, and executing initial and subsequent service plans. The procedures shall provide for the provider's participation.
- (11) Procedures for affording individuals due process protections;
- (12) General staffing, training, and certification requirements that are consistent with state requirements and compensation arrangements that are necessary to attract, train, and retain competent personnel to deliver the services pursuant to the individual service needs addendum;
- (13) Methods to be used to document services provided and procedures for submitting reports the county board requires;
- (14) Methods for authorizing and documenting within seventy-two hours changes to the individual service needs addendum. The methods shall allow for changes to be initially authorized verbally and subsequently in writing.
- (15) Procedures for modifying the individual service needs addendum in accordance with changes to the recipient's individualized service plan;
- (16) Procedures for terminating the individual service needs addendum within thirty days of a request made by the recipient;
- (17) A requirement that all parties to the contract accept the contract's terms and conditions;
- (18) A designated contact person and the method of contacting the designated person to respond to medical or behavioral problems and allegations of major unusual incidents or unusual incidents;

(19) Procedures for ensuring the health and welfare of the recipient;
(20) Procedures for ensuring fiscal accountability and the collection and reporting of programmatic data;

(21) Procedures for implementing the mediation and arbitration process under section 5126.036 of the Revised Code;

(22) Procedures for amending or terminating the contract, including as necessary to make the general operating agreement component consistent with any changes made to the individual service needs addendum;

(23) Anything else allowable under federal and state law that the county board and provider agree to.

(D) The individual service needs addendum shall be consistent with the general operating agreement component and include all of the following:

(1) The name of the individual with mental retardation or other developmental disability who is to receive the services from the provider and any information about the recipient that the provider needs to be able to provide the services;

(2) A clear and complete description of the services that the recipient is to receive as determined using statewide assessment tools;

(3) A copy of the recipient's assessment and individualized service plan;

(4) A clear and complete description of the provider's responsibilities to the recipient and county board in providing appropriate services in a coordinated manner with other providers and in a manner that contributes to and ensures the recipient's health, safety, and welfare.

(E) The director of mental retardation and developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code governing service contracts. A service contract does not negate the requirement that a provider of home and community-based services, medicaid case management services, or habilitation center services have a medicaid provider agreement with the department of job and family services.

Sec. 5126.036. (A) As used in this section:

(1) "Aggrieved party" means any of the following:

(a) The party to a service contract that is aggrieved by an action the other party has taken or not taken under the service contract;

(b) A person or government entity aggrieved by the refusal of a county board of mental retardation and developmental disabilities to enter into a service contract with the person or government entity;

(c) A person or government entity aggrieved by termination by a county board of mental retardation and development disabilities of a service contract between the person or government entity and the county board.

(2) "Mediator/arbitrator" means either of the following:

(a) An attorney at law licensed to practice law in this state who is mutually selected by the parties under division (B)(4) of this section to conduct mediation and arbitration;

(b) A retired judge who is selected under division (B)(4) of this section to conduct mediation and arbitration.

(3) "Other party" means any of the following:

(a) The party to a service contract that has taken or not taken an action under the service contract that causes the aggrieved party to be aggrieved;

(b) A county board of mental retardation and developmental disabilities that refuses to enter into a service contract with a person or government entity;

(c) A county board of mental retardation and developmental disabilities that terminates a service contract.

(4) "Parties" mean either of the following:

(a) A county board of mental retardation and developmental disabilities and a provider that have or had a service contract with each other;

(b) A person or government entity that seeks a service contract with a county board of mental retardation and developmental disabilities and the county board that refuses to enter into the service contract with the person or government entity.

(5) "Provider" means a person or government entity that provides services to an individual with mental retardation or other developmental disability pursuant to a service contract.

(6) "Service contract" means a contract between a county board of mental retardation and developmental disabilities and a provider under which the provider is to provide services to an individual with mental retardation or other developmental disability.

(B) An aggrieved party that seeks to require the other party to take or cease an action under a service contract that causes the aggrieved party to be aggrieved, a person or government entity aggrieved by the refusal of a county board of mental retardation and developmental disabilities to enter into a service contract with the person or government entity, or a person or government entity aggrieved by a county board's termination of a service contract between the person or government entity and the county board and the other party shall follow the following mediation and arbitration procedures:

(1) No later than thirty days after first notifying the other party that the aggrieved party is aggrieved, the aggrieved party shall file a written notice of mediation and arbitration with the department of mental retardation and

developmental disabilities and provide a copy of the written notice to the other party. The written notice shall include an explanation of why the aggrieved party is aggrieved. The department of mental retardation and developmental disabilities shall provide the department of job and family services a copy of the notice.

(2) In the case of parties that have a current service contract with each other and unless otherwise agreed to by both parties, the parties shall continue to operate under the contract in the manner they have been operating until the mediation and arbitration process, including an appeal under division (B)(9) of this section, if any, is completed.

(3) During the thirty days following the date the aggrieved party files the written notice of mediation and arbitration under division (B)(1) of this section, the parties may attempt to resolve the conflict informally. If the parties are able to resolve the conflict informally within this time, the aggrieved party shall rescind the written notice of mediation and arbitration filed under division (B)(1) of this section.

(4) No later than thirty days after the date the aggrieved party files the written notice of mediation and arbitration under division (B)(1) of this section, the parties shall mutually select an attorney at law licensed to practice law in this state to conduct the mediation and arbitration and schedule the first meeting of the mediation unless the parties informally resolve the conflict under division (B)(3) of this section. If the parties fail to select an attorney to conduct the mediation and arbitration within the required time, the parties shall request that the chief justice of the supreme court of Ohio provide the parties a list of five retired judges who are willing to perform the mediation and arbitration duties. The chief justice shall create such a list and provide it to the parties. To select the retired judge to conduct the mediation and arbitration, the parties shall take turns, beginning with the aggrieved party, striking retired judges from the list. The retired judge remaining on the list after both parties have each stricken two retired judges from the list shall perform the mediation and arbitration duties, including scheduling the first meeting of mediation if the parties are unable to agree on a date for the first meeting.

(5) A stenographic record or tape recording and transcript of each mediation and arbitration meeting shall be maintained as part of the mediation and arbitration's official records. The parties shall share the cost of the mediation and arbitration, including the cost of the mediator/arbitrator's services but excluding the cost of representation.

(6) The first mediation meeting shall be held no later than sixty days after the date the aggrieved party files the written notice of mediation and

arbitration under division (B)(1) of this section unless the parties informally resolve the conflict under division (B)(3) of this section or the parties mutually agree to hold the first meeting at a later time. The mediation shall be conducted in the manner the parties mutually agree. If the parties are unable to agree on how the mediation is to be conducted, the mediator/arbitrator selected under division (B)(4) of this section shall determine how it is to be conducted. The rules of evidence may be used. The mediator/arbitrator shall attempt to resolve the conflict through the mediation process. The mediator/arbitrator's resolution of the conflict may be applied retroactively.

(7) If the conflict is not resolved through the mediation process, the mediator/arbitrator shall arbitrate the conflict. The parties shall present evidence to the mediator/arbitrator in the manner the mediator/arbitrator requires. The mediator/arbitrator shall render a written recommendation within thirty days of the conclusion of the last arbitration meeting based on the service contract, applicable law, and the preponderance of the evidence presented during the arbitration. The mediator/arbitrator's recommendation may be applied retroactively. If the parties agree, the mediator/arbitrator may continue to attempt to resolve the conflict through mediation while the mediator/arbitrator arbitrates the conflict.

(8) No later than thirty days after the mediator/arbitrator renders a recommendation in an arbitration, the mediator/arbitrator shall provide the parties with a written recommendation and forward a copy of the written recommendation, transcripts from each arbitration meeting, and a copy of all evidence presented to the mediator/arbitrator during the arbitration to the departments of mental retardation and developmental disabilities and job and family services.

(9) No later than thirty days after the department of mental retardation and developmental disabilities receives the mediator/arbitrator's recommendation and the materials required by division (B)(8) of this section, the department shall adopt, reject, or modify the mediator/arbitrator's recommendation consistent with the mediator/arbitrator's findings of fact and conclusions of law or remand any portion of the recommendation to the mediator/arbitrator for further findings on a specific factual or legal issue. The mediator/arbitrator shall complete the further findings and provide the parties and the department with a written response to the remand within sixty days of the date the mediator/arbitrator receives the remand. On receipt of the mediator/arbitrator's response to the remand, the department, within thirty days, unless the parties agree otherwise, shall adopt, reject, or modify the

mediator/arbitrator's response. The department's actions regarding the mediator/arbitrator's recommendation and response are a final adjudication order subject to appeal to the court of common pleas of Franklin county under section 119.12 of the Revised Code, except that the court shall consider only whether the conclusions of law the department adopts are in accordance with the law.

(10) If the department of job and family services, in consultation with the department of mental retardation and developmental disabilities, determines no later than thirty days following the date the department of mental retardation and developmental disabilities receives the mediator/arbitrator's recommendation and the materials required by division (B)(8) of this section, or, if the recommendation is remanded under division (B)(9) of this section, thirty days following the date the department receives the response to the remand, that any aspect of the conflict between the parties affects the medicaid program, the department of mental retardation and developmental disabilities shall take all actions under division (B)(9) of this section in consultation with the department of job and family services.

(C) If the department of mental retardation and developmental disabilities is aware of a conflict between a county board of mental retardation and developmental disabilities and a person or government entity that provides or seeks to provide services to an individual with mental retardation or other developmental disability to which the mediation and arbitration procedures established by this section may be applied and that the aggrieved party has not filed a written notice of mediation and arbitration within the time required by division (B)(1) of this section, the department may require that the parties implement the mediation and arbitration procedures.

(D) Each service contract shall provide for the parties to follow the mediation and arbitration procedures established by this section if a party takes or does not take an action under the service contract that causes the aggrieved party to be aggrieved or if the provider is aggrieved by the county board's termination of the service contract.

Sec. 5126.042. (A) As used in this section:

(1) "Emergency" means any situation that creates for an individual with mental retardation or developmental disabilities a risk of substantial self-harm or substantial harm to others if action is not taken within thirty days. An "emergency" may include one or more of the following situations:

(a) Loss of present residence for any reason, including legal action;

(b) Loss of present caretaker for any reason, including serious illness of the caretaker, change in the caretaker's status, or inability of the caretaker to

perform effectively for the individual;

(c) Abuse, neglect, or exploitation of the individual;

(d) Health and safety conditions that pose a serious risk to the individual or others of immediate harm or death;

(e) Change in the emotional or physical condition of the individual that necessitates substantial accommodation that cannot be reasonably provided by the individual's existing caretaker.

(2) "Medicaid" has the same meaning as in section 5111.01 of the Revised Code.

(B) If a county board of mental retardation and developmental disabilities determines that available resources are not sufficient to meet the needs of all individuals who request programs and services and may be offered the programs and services, it shall establish waiting lists for services. The board may establish priorities for making placements on its waiting lists according to an individual's emergency status and shall establish priorities in accordance with division (D) of this section.

The individuals who may be placed on a waiting list include individuals with a need for services on an emergency basis and individuals who have requested services for which resources are not available.

Except for an individual who is to receive priority for services pursuant to division (D)(3) of this section, an individual who currently receives a service but would like to change to another service shall not be placed on a waiting list but shall be placed on a service substitution list. The board shall work with the individual, service providers, and all appropriate entities to facilitate the change in service as expeditiously as possible. The board may establish priorities for making placements on its service substitution lists according to an individual's emergency status.

In addition to maintaining waiting lists and service substitution lists, a board shall maintain a long-term service planning registry for individuals who wish to record their intention to request in the future a service they are not currently receiving. The purpose of the registry is to enable the board to document requests and to plan appropriately. The board may not place an individual on the registry who meets the conditions for receipt of services on an emergency basis.

(C) A county board shall establish a separate waiting list for each of the following categories of services, and may establish separate waiting lists within the waiting lists:

(1) Early childhood services;

(2) Educational programs for preschool and school age children;

(3) Adult services;

- (4) ~~service~~ Service and support administration;
- (5) Residential services and supported living;
- (6) Transportation services;
- (7) Other services determined necessary and appropriate for persons with mental retardation or a developmental disability according to their individual habilitation or service plans;
- (8) Family support services provided under section 5126.11 of the Revised Code.

(D) Except as provided in division ~~(E)~~(F) of this section, a county board shall do, as priorities, all of the following in accordance with the assessment component, approved under section 5123.046 of the Revised Code, of the county board's plan approved developed under section 5123.046 5126.054 of the Revised Code as priorities:

(1) For the purpose of obtaining additional federal medicaid funds for home and community-based services, medicaid case management services, and habilitation center services, do both of the following:

(a) Give an individual who is eligible for home and community-based services and meets both of the following requirements priority over any other individual on a waiting list established under division (C) of this section for home and community-based services that include supported living, residential services, or family support services:

- (i) Is twenty-two years of age or older;
- (ii) Receives supported living or family support services.

(b) Give an individual who is eligible for home and community-based services and meets both of the following requirements priority over any other individual on a waiting list established under division (C) of this section for home and community-based services that include adult services:

- (i) Resides in the individual's own home or the home of the individual's family and will continue to reside in that home after enrollment in home and community-based services;
- (ii) Receives adult services from the county board.

(2) As federal medicaid funds become available pursuant to division (D)(1) of this section, give an individual who is eligible for home and community-based services and meets any of the following requirements priority for such services over any other individual on a waiting list established under division (C) of this section ~~other than an individual given priority under division (D)(1) of this section~~:

(a) Does not receive residential services or supported living, either needs services in the individual's current living arrangement or will need services in a new living arrangement, and has a primary caregiver who is

sixty years of age or older;

(b) Is less than twenty-two years of age, ~~does not receive residential services or supported living, resides in the home of the individual's family,~~ and has at least one of the following service needs that are unusual in scope or intensity:

(i) Severe behavior problems for which a behavior support plan is needed;

(ii) An emotional disorder for which anti-psychotic medication is needed;

(iii) A medical condition that leaves the individual dependent on life-support medical technology;

(iv) A condition affecting multiple body systems for which a combination of specialized medical, psychological, educational, or habilitation services are needed;

(v) A condition the county board determines to be comparable in severity to any condition described in division (D)(1) (2)(b)(i) to (iv) of this section and places the individual at significant risk of institutionalization.

(c) Is twenty-two years of age or older, does not receive residential services or supported living, and is determined by the county board to have intensive needs for ~~residential~~ home and community-based services on an in-home or out-of-home basis.

(3) In fiscal years 2002 and 2003, give an individual who is eligible for home and community-based services, resides in an intermediate care facility for the mentally retarded or nursing facility, chooses to move to another setting with the help of home and community-based services, and has been determined by the department of mental retardation and developmental disabilities to be capable of residing in the other setting, priority over any other individual on a waiting list established under division (C) of this section for home and community-based services who does not meet these criteria. The department of mental retardation and developmental disabilities shall identify the individuals to receive priority under division (D)(3) of this section, assess the needs of the individuals, and notify the county boards that are to provide the individuals priority under division (D)(3) of this section of the individuals identified by the department and the individuals' assessed needs.

(E) If two or more individuals on a waiting list established under division (C) of this section for home and community-based services have priority for the services pursuant to division (D)(1) or (2) of this section, a county board may use, until December 31, 2003, criteria specified in rules adopted under division (J)(2) of this section in determining the order in

which the individuals with priority will be offered the services. Otherwise, the county board shall offer the home and community-based services to such individuals in the order they are placed on the waiting list.

(E)(1) No individual may receive priority for services pursuant to division (D) of this section over an individual placed on a waiting list established under division (C) of this section on an emergency status.

(2) No more than ~~two~~ four hundred individuals in the state may receive priority for services during ~~state fiscal years~~ the 2002 and 2003 biennium pursuant to division (D)(2)(b) of this section.

(3) No more than a total of seventy-five individuals in the state may receive priority for services during state fiscal years 2002 and 2003 pursuant to division (D)(3) of this section.

~~(F)(G) Prior to establishing any waiting list under this section, a county board shall develop and implement a policy for waiting lists that complies with this section and rules that the department of mental retardation and developmental disabilities shall adopt in accordance with Chapter 119. of the Revised Code. The department's rules shall include procedures to be followed to ensure that the due process rights of individuals placed on waiting lists are not violated~~ adopted under division (J) of this section.

Prior to placing an individual on a waiting list, the county board shall assess the service needs of the individual in accordance with all applicable state and federal laws. The county board shall place the individual on the appropriate waiting list and may place the individual on more than one waiting list. The county board shall notify the individual of the individual's placement and position on each waiting list on which the individual is placed.

At least annually, the county board shall reassess the service needs of each individual on a waiting list. If it determines that an individual no longer needs a program or service, the county board shall remove the individual from the waiting list. If it determines that an individual needs a program or service other than the one for which the individual is on the waiting list, the county board shall provide the program or service to the individual or place the individual on a waiting list for the program or service in accordance with the board's policy for waiting lists.

When a program or service for which there is a waiting list becomes available, the county board shall reassess the service needs of the individual next scheduled on the waiting list to receive that program or service. If the reassessment demonstrates that the individual continues to need the program or service, the board shall offer the program or service to the individual. If it determines that an individual no longer needs a program or service, the

county board shall remove the individual from the waiting list. If it determines that an individual needs a program or service other than the one for which the individual is on the waiting list, the county board shall provide the program or service to the individual or place the individual on a waiting list for the program or service in accordance with the board's policy for waiting lists. The county board shall notify the individual of the individual's placement and position on the waiting list on which the individual is placed.

~~(G)~~(H) A child subject to a determination made pursuant to section 121.38 of the Revised Code who requires the home and community-based services provided through the medicaid component that the department of mental retardation and developmental disabilities administers under section 5111.871 of the Revised Code shall receive services through that medicaid component. For all other services, a child subject to a determination made pursuant to section 121.38 of the Revised Code shall be treated as an emergency by the county boards and shall not be subject to a waiting list.

~~(H)~~(I) Not later than the fifteenth day of March of each even-numbered year, each county board shall prepare and submit to the director of mental retardation and developmental disabilities its recommendations for the funding of services for individuals with mental retardation and developmental disabilities and its proposals for reducing the waiting lists for services.

~~(I)~~(J)(1) The department of mental retardation and developmental disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code governing waiting lists established under this section. The rules shall include procedures to be followed to ensure that the due process rights of individuals placed on waiting lists are not violated.

(2) As part of the rules adopted under this division, the department shall adopt, not later than December 31, 2001, rules establishing criteria a county board may use under division (E) of this section in determining the order in which individuals with priority for home and community-based services will be offered the services. The rules shall also specify conditions under which a county board, when there is no individual with priority for home and community-based services pursuant to division (D)(1) or (2) of this section available and appropriate for the services, may offer the services to an individual on a waiting list for the services but not given such priority for the services. The rules adopted under division (J)(2) of this section shall cease to have effect December 31, 2003.

(K) The following shall take precedence over the applicable provisions of this section:

- (1) Medicaid rules and regulations;

(2) Any specific requirements that may be contained within a medicaid state plan amendment or waiver program that a county board has authority to administer or with respect to which it has authority to provide services, programs, or supports.

Sec. 5126.046. (A) Each county board of mental retardation and developmental disabilities that has medicaid local administrative authority under division (A) of section 5126.055 of the Revised Code for habilitation, vocational, or community employment services provided as part of home and community-based services shall create a list of all persons and government entities eligible to provide such habilitation, vocational, or community employment services. If the county board chooses and is eligible to provide such habilitation, vocational, or community employment services, the county board shall include itself on the list. The county board shall make the list available to each individual with mental retardation or other developmental disability who resides in the county and is eligible for such habilitation, vocational, or community employment services. The county board shall also make the list available to such individuals' families.

An individual with mental retardation or other developmental disability who is eligible for habilitation, vocational, or community employment services may choose the provider of the services.

~~If a~~ A county board ~~that~~ has medicaid local administrative authority under division (A) of section 5126.055 of the Revised Code for habilitation, vocational, and community employment services provided as part of home and community-based services, ~~the county board~~ shall pay the nonfederal share of the habilitation, vocational, and community employment services when required by section ~~5126.056~~ 5126.057 of the Revised Code. The department of mental retardation and developmental disabilities shall pay the nonfederal share of such habilitation, vocational, and community employment services when required by section 5123.047 of the Revised Code.

(B) Each month, the department of mental retardation and developmental disabilities shall create a list of all persons and government entities eligible to provide residential services and supported living. The department shall include on the list all residential facilities licensed under section 5123.19 of the Revised Code and all supported living providers certified under section 5126.431 of the Revised Code. The department shall distribute the monthly lists to county boards that have local administrative authority under division (A) of section 5126.055 of the Revised Code for residential services and supported living provided as part of home and community-based services. A county board that receives a list shall make it

available to each individual with mental retardation or other developmental disability who resides in the county and is eligible for such residential services or supported living. The county board shall also make the list available to the families of those individuals.

An individual who is eligible for residential services or supported living may choose the provider of the residential services or supported living.

~~If a~~ A county board ~~that~~ has medicaid local administrative authority under division (A) of section 5126.055 of the Revised Code for residential services and supported living provided as part of home and community-based services, ~~the county board~~ shall pay the nonfederal share of the residential services and supported living when required by section ~~5126.056~~ 5126.057 of the Revised Code. The department shall pay the nonfederal share of the residential services and supported living when required by section 5123.047 of the Revised Code.

(C) If a county board that has medicaid local administrative authority under division (A) of section 5126.055 of the Revised Code for home and community-based services violates the right established by this section of an individual to choose a provider that is qualified and willing to provide services to the individual, the individual shall receive timely notice that the individual may request a hearing under section 5101.35 of the Revised Code.

(D) The departments of mental retardation and developmental disabilities and job and family services shall adopt rules in accordance with Chapter 119. of the Revised Code governing the implementation of this section. The rules shall include procedures for individuals to choose their service providers. The rules shall not be limited by a provider selection system established under section 5126.42 of the Revised Code, including any pool of providers created pursuant to a provider selection system.

Sec. 5126.05. (A) Subject to the rules established by the director of mental retardation and developmental disabilities pursuant to Chapter 119. of the Revised Code for programs and services offered pursuant to this chapter, and subject to the rules established by the state board of education pursuant to Chapter 119. of the Revised Code for programs and services offered pursuant to Chapter 3323. of the Revised Code, the county board of mental retardation and developmental disabilities shall:

(1) Administer and operate facilities, programs, and services as provided by this chapter and Chapter 3323. of the Revised Code and establish policies for their administration and operation;

(2) Coordinate, monitor, and evaluate existing services and facilities available to individuals with mental retardation and developmental

disabilities;

(3) Provide early childhood services, supportive home services, and adult services, according to the plan and priorities developed under section 5126.04 of the Revised Code;

(4) Provide or contract for special education services pursuant to Chapters 3317. and 3323. of the Revised Code and ensure that related services, as defined in section 3323.01 of the Revised Code, are available according to the plan and priorities developed under section 5126.04 of the Revised Code;

(5) Adopt a budget, authorize expenditures for the purposes specified in this chapter and do so in accordance with section 319.16 of the Revised Code, approve attendance of board members and employees at professional meetings and approve expenditures for attendance, and exercise such powers and duties as are prescribed by the director;

(6) Submit annual reports of its work and expenditures, pursuant to sections 3323.09 and 5126.12 of the Revised Code, to the director, the superintendent of public instruction, and the board of county commissioners at the close of the fiscal year and at such other times as may reasonably be requested;

(7) Authorize all positions of employment, establish compensation, including but not limited to salary schedules and fringe benefits for all board employees, approve contracts of employment for management employees that are for a term of more than one year, employ legal counsel under section 309.10 of the Revised Code, and contract for employee benefits;

(8) Provide service and support administration in accordance with section ~~5126.046~~ 5126.15 of the Revised Code;

(9) Certify respite care homes pursuant to rules adopted under section 5123.171 of the Revised Code by the director of mental retardation and developmental disabilities.

(B) To the extent that rules adopted under this section apply to the identification and placement of handicapped children under Chapter 3323. of the Revised Code, they shall be consistent with the standards and procedures established under sections 3323.03 to 3323.05 of the Revised Code.

(C) Any county board may enter into contracts with other such boards and with public or private, nonprofit, or profit-making agencies or organizations of the same or another county, to provide the facilities, programs, and services authorized or required, upon such terms as may be agreeable, and in accordance with this chapter and Chapter 3323. of the Revised Code and rules adopted thereunder and in accordance with sections

307.86 and 5126.071 of the Revised Code.

(D) A county board may combine transportation for children and adults enrolled in programs and services offered under section 5126.12 with transportation for children enrolled in classes funded under section 3317.20 or units approved under section 3317.05 of the Revised Code.

(E) A county board may purchase all necessary insurance policies, may purchase equipment and supplies through the department of administrative services or from other sources, and may enter into agreements with public agencies or nonprofit organizations for cooperative purchasing arrangements.

(F) A county board may receive by gift, grant, devise, or bequest any moneys, lands, or property for the benefit of the purposes for which the board is established and hold, apply, and dispose of the moneys, lands, and property according to the terms of the gift, grant, devise, or bequest. All money received by gift, grant, bequest, or disposition of lands or property received by gift, grant, devise, or bequest shall be deposited in the county treasury to the credit of such board and shall be available for use by the board for purposes determined or stated by the donor or grantor, but may not be used for personal expenses of the board members. Any interest or earnings accruing from such gift, grant, devise, or bequest shall be treated in the same manner and subject to the same provisions as such gift, grant, devise, or bequest.

(G) The board of county commissioners shall levy taxes and make appropriations sufficient to enable the county board of mental retardation and developmental disabilities to perform its functions and duties, and may utilize any available local, state, and federal funds for such purpose.

Sec. 5126.054. (A) Each county board of mental retardation and developmental disabilities shall, by resolution, develop a three-calendar year plan that includes ~~all of~~ the following four components:

(1) An assessment component that includes all of the following:

(a) The number of individuals with mental retardation or other developmental disability residing in the county who need the level of care provided by an intermediate care facility for the mentally retarded, may seek home and community-based services, are given priority for the services pursuant to division (D) of section 5126.042 of the Revised Code; the service needs of those individuals; and the projected annualized cost for services;

(b) The source of funds available to the county board to pay the nonfederal share of medicaid expenditures that the county board is required by division (A) of section ~~5126.056~~ 5126.057 of the Revised Code to pay;

(c) Any other applicable information or conditions that the department of mental retardation and developmental disabilities requires as a condition of approving the ~~plan~~ component under section 5123.046 of the Revised Code.

(2) A component that provides for the recruitment, training, and retention of existing and new direct care staff necessary to implement services included in individualized service plans, including behavior management services and health management services such as delegated nursing and other habilitation ~~center~~ services, and protect the health and welfare of individuals receiving services included in the individual's individualized service plan by complying with safeguards for unusual and major unusual incidents, day-to-day program management, and other requirements the department shall identify. A county board shall develop this component in collaboration with providers of medicaid-funded services with which the county board contracts. A county board shall include all of the following in the component:

(a) The source and amount of funds available for the component;

(b) A plan and timeline for implementing the component with the medicaid providers under contract with the county board;

(c) The mechanisms the county board shall use to ensure the financial and program accountability of the medicaid provider's implementation of the component.

(3) A preliminary implementation component that specifies the number of individuals to be provided, during the first year that the plan is in effect, home and community-based services pursuant to the priority given to them under divisions (D)(1) and (2) of section 5126.042 of the Revised Code and the types of home and community-based services the individuals are to receive;

(4) A component that provides for the implementation of habilitation center services, medicaid case management services, and home and community-based services for individuals who begin to receive the services on or after the date the plan is approved under section 5123.046 of the Revised Code. A county board shall include all of the following in the component:

(a) If the department of mental retardation and developmental disabilities or department of job and family services requires, an agreement to pay the nonfederal share of medicaid expenditures that the county board is required by division (A) of section ~~5126.056~~ 5126.057 of the Revised Code to pay;

(b) How the services are to be phased in over the period the plan covers,

including how the county board will serve individuals on a waiting list established under division (C) of section 5126.042 who are given priority status under division (D)(1) of that section;

(c) Any agreement or commitment regarding the county board's funding of home and community-based services that the county board has with the department at the time the county board develops the component;

(d) Assurances adequate to the department that the county board will comply with all of the following requirements:

(i) To provide the types of home and community-based services specified in the preliminary implementation component required by division (A)(3) of this section to at least the number of individuals specified in that component;

(ii) To use any additional funds the county board receives for the services to improve the county board's resource capabilities for supporting such services available in the county at the time the component is developed and to expand the services to accommodate the unmet need for those services in the county;

~~(ii)~~(iii) To employ a business manager who is either a new employee who has earned at least a bachelor's degree in business administration or a current employee who has the equivalent experience of a bachelor's degree in business administration. If the county board will employ a new employee, the county board shall include in the component a timeline for employing the employee.

~~(iii)~~(iv) To employ or contract with a medicaid services manager who is either a new employee who has earned at least a bachelor's degree or a current employee who has the equivalent experience of a bachelor's degree. If the county board will employ a new employee, the county board shall include in the component a timeline for employing the employee. Two or three county boards that have a combined total enrollment in county board services not exceeding one thousand individuals as determined pursuant to certifications made under division (B) of section 5126.12 of the Revised Code may satisfy this requirement by sharing the services of a medicaid services manager or using the services of a medicaid services manager employed by or under contract with a regional council that the county boards establish under section 5126.13 of the Revised Code.

(e) An agreement to comply with the method, developed by rules adopted under section 5123.0413 of the Revised Code, of paying for extraordinary costs, including extraordinary costs for services to individuals with mental retardation or other developmental disability, and ensuring the availability of adequate funds in the event a county property tax levy for

services for individuals with mental retardation or other developmental disability fails;

(f) Programmatic and financial accountability measures and projected outcomes expected from the implementation of the plan;

(g) Any other applicable information or conditions that the department requires as a condition of approving the ~~plan~~ component under section 5123.046 of the Revised Code.

(B) For the purpose of obtaining the department's approval under section 5123.046 of the Revised Code of the plan the county board develops under division (A) of this section, a county board shall do ~~both~~ all of the following:

(1) Submit the components required by divisions (A)(1) and (2) of this section to the department not later than August 1, 2001;

(2) Submit the component required by division (A)(3) of this section to the department not later than January 31, 2002;

(3) Submit the component required by division (A)(3)(4) of this section to the department not later than November July 1, 2001 2002.

(C) A county board whose plan developed under division (A) of this section is approved by the department under section 5123.046 of the Revised Code shall update and renew the plan in accordance with a schedule the department shall develop.

Sec. 5126.055. (A) Except as provided in ~~division (C) of this section 5126.056 of the Revised Code~~, a county board of mental retardation and developmental disabilities ~~with an approved plan under section 5123.046 of the Revised Code~~ has medicaid local administrative authority to, and shall, do all of the following for an individual with mental retardation or other developmental disability who resides in the county that the county board serves and seeks or receives home and community-based services:

(1) Perform assessments and evaluations of the individual. As part of the assessment and evaluation process, the county board shall do all of the following:

(a) Make a recommendation to the department of mental retardation and developmental disabilities on whether the department should approve or deny the individual's application for the services, including on the basis of whether the individual needs the level of care an intermediate care facility for the mentally retarded provides;

(b) If the individual's application is denied because of the county board's recommendation and the individual requests a hearing under section 5101.35 of the Revised Code, present, with the department of mental retardation and developmental disabilities or department of job and family

services, whichever denies the application, the reasons for the recommendation and denial at the hearing;

(c) If the individual's application is approved, recommend to the departments of mental retardation and developmental disabilities and job and family services the services that should be included in the individual's individualized service plan and, if either department approves, reduces, denies, or terminates a service included in the individual's individualized service plan under section 5111.871 of the Revised Code because of the county board's recommendation, present, with the department that made the approval, reduction, denial, or termination, the reasons for the recommendation and approval, reduction, denial, or termination at a hearing under section 5101.35 of the Revised Code.

(2) If the individual has been identified by the department of mental retardation and developmental disabilities as an individual to receive priority for home and community-based services pursuant to division (D)(3) of section 5126.042 of the Revised Code, assist the department in expediting the transfer of the individual from an intermediate care facility for the mentally retarded or nursing facility to the home and community-based services;

(3) In accordance with the rules adopted under section 5126.046 of the Revised Code, perform the county board's duties under that section regarding assisting the individual's right to choose a qualified and willing provider of the services and, at a hearing under section 5101.35 of the Revised Code, present evidence of the process for appropriate assistance in choosing providers;

(4) Unless the county board provides the services under division (A)(5) of this section, contract with the person or government entity the individual chooses in accordance with section 5126.046 of the Revised Code to provide the services if the person or government entity is qualified and agrees to provide the services. The contract shall contain all the provisions required by section ~~5126.057~~ 5126.035 of the Revised Code and require the provider to agree to furnish, in accordance with the provider's medicaid provider agreement and for the authorized reimbursement rate, the services the individual requires.

(5) If the county board is certified under section 5123.045 of the Revised Code to provide the services and agrees to provide the services to the individual and the individual chooses the county board to provide the services, furnish, in accordance with the county board's medicaid provider agreement and for the authorized reimbursement rate, the services the individual requires;

(6) Monitor the services provided to the individual and ensure the individual's health, safety, and welfare. The monitoring shall include quality assurance activities. If the county board provides the services, the department of mental retardation and developmental disabilities shall also monitor the services.

(7) Develop, with the individual and the provider of the individual's services, an effective individualized service plan that includes coordination of services, recommend that the departments of mental retardation and developmental disabilities and job and family services approve the plan, and implement the plan unless either department disapproves it;

(8) Have an investigative agent conduct investigations under section 5126.313 of the Revised Code that concern the individual;

(9) Have a service and support administrator perform the duties under division (B)(9) of section 5126.15 of the Revised Code that concern the individual.

(B) Except as provided in ~~division (G) of this section 5126.056 of the Revised Code, a county board with an approved plan under section 5123.046 of the Revised Code~~ has medicaid local administrative authority to, and shall, do all of the following for an individual with mental retardation or other developmental disability who resides in the county that the county board serves and seeks or receives medicaid case management services or habilitation center services, other than habilitation center services for which a school district is required by division (E) of section 5111.041 of the Revised Code to pay the nonfederal share:

(1) Perform assessments and evaluations of the individual for the purpose of recommending to the departments of mental retardation and developmental disabilities and job and family services the services that should be included in the individual's individualized service plan;

(2) If the department of mental retardation and developmental disabilities or department of job and family services approves, reduces, denies, or terminates a service included in the individual's individualized service plan under section 5111.041 or 5111.042 of the Revised Code because of the county board's recommendation under division (B)(1) of this section, present, with the department that made the approval, reduction, denial, or termination, the reasons for the recommendation and approval, reduction, denial, or termination at a hearing under section 5101.35 of the Revised Code and inform the individual that the individual may file a complaint with the county board under section 5126.06 of the Revised Code at the same time the individual pursues an appeal under section 5101.35 of the Revised Code;

(3) In accordance with rules the departments of mental retardation and developmental disabilities and job and family services shall adopt in accordance with Chapter 119. of the Revised Code governing the process for individuals to choose providers of medicaid case management services and habilitation center services, assist the individual in choosing the provider of the services. The rules shall provide for both of the following:

(a) The county board providing the individual up-to-date information about qualified providers that the department of mental retardation and developmental disabilities shall make available to the county board;

(b) If the individual chooses a provider who is qualified and willing to provide the services but is denied that provider, the individual receiving timely notice that the individual may request a hearing under section 5101.35 of the Revised Code and, at the hearing, the county board presenting evidence of the process for appropriate assistance in choosing providers.

(4) Unless the county board provides the services under division (B)(5) of this section, contract with the person or government entity that the individual chooses in accordance with the rules adopted under division (B)(3) of this section to provide the services if the person or government entity is qualified and agrees to provide the services. The contract shall contain all the provisions required by section ~~5126.057~~ 5126.035 of the Revised Code and require the provider to agree to furnish, in accordance with the provider's medicaid provider agreement and for the authorized reimbursement rate, the services the individual requires.

(5) If the county board is certified under section 5123.041 of the Revised Code to provide the services and agrees to provide the services to the individual and the individual chooses the county board to provide the services, furnish, in accordance with the county board's medicaid provider agreement and for the authorized reimbursement rate, the services the individual requires;

(6) Monitor the services provided to the individual. The monitoring shall include quality assurance activities. If the county board provides the services, the department of mental retardation and developmental disabilities shall also monitor the services.

(7) Develop with the individual and the provider of the individual's services, and with the approval of the departments of mental retardation and developmental disabilities and job and family services, implement an effective plan for coordinating the services in accordance with the individual's approved individualized service plan;

(8) Have an investigative agent conduct investigations under section

5126.313 of the Revised Code that concern the individual;

(9) Have a service and support administrator perform the duties under division (B)(9) of section 5126.15 of the Revised Code that concern the individual.

(C) A county board shall perform its medicaid local administrative authority under this section in accordance with all of the following:

(1) The county board's plan that the department of mental retardation and developmental disabilities approves under section 5123.046 of the Revised Code;

(2) All applicable federal and state laws;

(3) All applicable policies of the departments of mental retardation and developmental disabilities and job and family services and the United States department of health and human services;

(4) The department of job and family services' supervision under its authority under section 5111.01 of the Revised Code to act as the single state medicaid agency;

(5) The department of mental retardation and developmental disabilities' oversight.

(D) The departments of mental retardation and developmental disabilities and job and family services shall communicate with and provide training to county boards regarding medicaid local administrative authority granted by this section. The communication and training shall include issues regarding audit protocols and other standards established by the United States department of health and human services that the departments determine appropriate for communication and training. County boards shall participate in the training. The departments shall assess the county board's compliance against uniform standards that the departments shall establish.

(E) A county board may not delegate its medicaid local administrative authority granted under this section but may contract with a person or government entity, including a council of governments, for assistance with its medicaid local administrative authority. A county board that enters into such a contract shall notify the director of mental retardation and developmental disabilities. The notice shall include the tasks and responsibilities that the contract gives to the person or government entity. The person or government entity shall comply in full with all requirements to which the county board is subject regarding the person or government entity's tasks and responsibilities under the contract. The county board remains ultimately responsible for the tasks and responsibilities.

(F) A county board that has medicaid local administrative authority under this section shall, through the departments of mental retardation and

developmental disabilities and job and family services, reply to, and cooperate in arranging compliance with, a program or fiscal audit or program violation exception that a state or federal audit or review discovers. The department of job and family services shall timely notify the department of mental retardation and developmental disabilities and the county board of any adverse findings. After receiving the notice, the county board, in conjunction with the department of mental retardation and developmental disabilities, shall cooperate fully with the department of job and family services and timely prepare and send to the department a written plan of correction or response to the adverse findings. The county board is liable for any adverse findings that result from an action it takes or fails to take in its implementation of medicaid local administrative authority.

(G)(1) If the department of mental retardation and developmental disabilities or department of job and family services determines that a county board's implementation of its medicaid local administrative authority under this section is deficient, the department that makes the determination shall require that county board do the following:

(a)(1) If the deficiency affects the health, safety, or welfare of an individual with mental retardation or other developmental disability, correct the deficiency within twenty-four hours;

(b)(2) If the deficiency does not affect the health, safety, or welfare of an individual with mental retardation or other developmental disability, receive technical assistance from the department or submit a plan of correction to the department that is acceptable to the department within sixty days and correct the deficiency within the time required by the plan of correction.

~~(2) If the county board fails to correct a deficiency within the time required by division (G)(1) of this section to the satisfaction of the department, or submit an acceptable plan of correction within the time required by division (G)(1)(b) of this section, the department shall issue an order terminating the county board's medicaid local administrative authority over all or part of home and community-based services, medicaid managed care services, habilitation center services, all or part of two of those services, or all or part of all three of those services. The department shall provide a copy of the order to the board of county commissioners, probate judge, county auditor, and president and superintendent of the county board. The department shall specify in the order the medicaid local administrative authority that the department is terminating, the reason for the termination, and the county board's option and responsibilities under this division.~~

~~A county board whose medicaid local administrative authority is~~

~~terminated may, no later than thirty days after the department issues the termination order, recommend to the department that another county board that has not had any of its medicaid local administrative authority terminated or another entity the department approves administer the services for which the county board's medicaid local administrative authority is terminated. The department may contract with the other county board or entity to administer the services. If the department enters into such a contract, the county board shall adopt a resolution giving the other county board or entity full medicaid local administrative authority over the services that the other county board or entity is to administer. The other county board or entity shall be known as the contracting authority.~~

~~If the county board does not submit a recommendation to the department regarding a contracting authority within the required time or the department rejects the county board's recommendation, the department shall appoint an administrative receiver to administer the services for which the county board's medicaid local administrative authority is terminated. To the extent necessary for the department to appoint an administrative authority, the department may utilize employees of the department, management personnel from another county board, or other individuals who are not employed by or affiliated with in any manner a person or government entity that provides home and community-based services, medicaid case management services, or habilitation center services pursuant to a contract with any county board. The administrative receiver shall assume full administrative responsibility for the county board's services for which the county board's medicaid local administrative authority is terminated.~~

~~The contracting authority or administrative receiver shall develop and submit to the department a plan of correction to remediate the problems that caused the department to issue the termination order. If, after reviewing the plan, the department approves it, the contracting authority or administrative receiver shall implement the plan.~~

~~The county board shall transfer control of state and federal funds it is otherwise eligible to receive for the services for which the county board's medicaid local administrative authority is terminated and funds the county board may use under division (B) of section 5126.056 of the Revised Code to pay the nonfederal share of the services that the county board is required by division (A) of that section to pay. The county board shall transfer control of the funds to the contracting authority or administrative receiver administering the services. The amount the county board shall transfer shall be the amount necessary for the contracting authority or administrative receiver to fulfill its duties in administering the services, including its duties~~

~~to pay its personnel for time worked, travel, and related matters. If the county board fails to make the transfer, the department may withhold the state and federal funds from the county board and bring a mandamus action against the county board in the court of common pleas of the county served by the county board or in the Franklin county court of common pleas. The mandamus action may not require that the county board transfer any funds other than the funds the county board is required by division (G)(2) of this section to transfer.~~

~~The contracting authority or administrative receiver has the right to authorize the payment of bills in the same manner that the county board may authorize payment of bills under this chapter and section 319.16 of the Revised Code.~~

Sec. 5126.056. (A) The department of mental retardation and developmental disabilities shall take action under division (B) of this section against a county board of mental retardation and developmental disabilities if any of the following are the case:

(1) The county board fails to submit to the department all the components of its three-year plan required by section 5126.054 of the Revised Code within the time required by division (B) of that section.

(2) The department disapproves the county board's three-year plan under section 5123.046 of the Revised Code.

(3) The county board fails, as required by division (C) of section 5126.054 of the Revised Code, to update and renew its three-year plan in accordance with a schedule the department develops under that section.

(4) The county board fails to implement its initial or renewed three-year plan approved by the department.

(5) The county board fails to correct a deficiency within the time required by division (G) of section 5126.055 of the Revised Code to the satisfaction of the department.

(6) The county board fails to submit an acceptable plan of correction to the department within the time required by division (G)(2) of section 5126.055 of the Revised Code.

(B) If required by division (A) of this section to take action against a county board, the department shall issue an order terminating the county board's medicaid local administrative authority over all or part of home and community-based services, medicaid case management services, habilitation center services, all or part of two of those services, or all or part of all three of those services. The department shall provide a copy of the order to the board of county commissioners, probate judge, county auditor, and president and superintendent of the county board. The department shall specify in the

order the medicaid local administrative authority that the department is terminating, the reason for the termination, and the county board's option and responsibilities under this division.

A county board whose medicaid local administrative authority is terminated may, not later than thirty days after the department issues the termination order, recommend to the department that another county board that has not had any of its medicaid local administrative authority terminated or another entity the department approves administer the services for which the county board's medicaid local administrative authority is terminated. The department may contract with the other county board or entity to administer the services. If the department enters into such a contract, the county board shall adopt a resolution giving the other county board or entity full medicaid local administrative authority over the services that the other county board or entity is to administer. The other county board or entity shall be known as the contracting authority.

If the department rejects the county board's recommendation regarding a contracting authority, the county board may appeal the rejection under section 5123.043 of the Revised Code.

If the county board does not submit a recommendation to the department regarding a contracting authority within the required time or the department rejects the county board's recommendation and the rejection is upheld pursuant to an appeal, if any, under section 5123.043 of the Revised Code, the department shall appoint an administrative receiver to administer the services for which the county board's medicaid local administrative authority is terminated. To the extent necessary for the department to appoint an administrative receiver, the department may utilize employees of the department, management personnel from another county board, or other individuals who are not employed by or affiliated with in any manner a person that provides home and community-based services, medicaid case management services, or habilitation center services pursuant to a contract with any county board. The administrative receiver shall assume full administrative responsibility for the county board's services for which the county board's medicaid local administrative authority is terminated.

The contracting authority or administrative receiver shall develop and submit to the department a plan of correction to remediate the problems that caused the department to issue the termination order. If, after reviewing the plan, the department approves it, the contracting authority or administrative receiver shall implement the plan.

The county board shall transfer control of state and federal funds it is otherwise eligible to receive for the services for which the county board's

medicaid local administrative authority is terminated and funds the county board may use under division (B) of section 5126.057 of the Revised Code to pay the nonfederal share of the services that the county board is required by division (A) of that section to pay. The county board shall transfer control of the funds to the contracting authority or administrative receiver administering the services. The amount the county board shall transfer shall be the amount necessary for the contracting authority or administrative receiver to fulfill its duties in administering the services, including its duties to pay its personnel for time worked, travel, and related matters. If the county board fails to make the transfer, the department may withhold the state and federal funds from the county board and bring a mandamus action against the county board in the court of common pleas of the county served by the county board or in the Franklin county court of common pleas. The mandamus action may not require that the county board transfer any funds other than the funds the county board is required by division (B) of this section to transfer.

The contracting authority or administrative receiver has the right to authorize the payment of bills in the same manner that the county board may authorize payment of bills under this chapter and section 319.16 of the Revised Code.

~~Sec. 5126.056~~ 5126.057. (A) A county board of mental retardation and developmental disabilities that has medicaid local administrative authority under division (A) of section 5126.055 of the Revised Code for home and community-based services shall pay the nonfederal share of medicaid expenditures for such services provided to an individual with mental retardation or other developmental disability who the county board determines under section 5126.041 of the Revised Code is eligible for county board services unless division (C)(2) of section 5123.047 of the Revised Code requires the department of mental retardation and developmental disabilities to pay the nonfederal share.

A county board that has medicaid local administrative authority under division (B) of section 5126.055 of the Revised Code for medicaid case management services shall pay the nonfederal share of medicaid expenditures for such services provided to an individual with mental retardation or other developmental disability who the county board determines under section 5126.041 of the Revised Code is eligible for county board services unless division (B)(2) of section 5123.047 of the Revised Code requires the department of mental retardation and developmental disabilities to pay the nonfederal share.

A county board shall pay the nonfederal share of medicaid expenditures

for habilitation center services when required to do so by division (D) of section 5111.041 of the Revised Code.

(B) A county board may use the following funds to pay the nonfederal share of the services that the county board is required by division (A) of this section to pay:

(1) To the extent consistent with the levy that generated the taxes, the following taxes:

(a) Taxes levied pursuant to division (L) of section 5705.19 of the Revised Code and section 5705.222 of the Revised Code;

(b) Taxes levied under section 5705.191 of the Revised Code that the board of county commissioners allocates to the county board to pay the nonfederal share of the services.

(2) Funds that the department of mental retardation and developmental disabilities distributes to the county board under sections 5126.11, 5126.12, 5126.15, 5126.18, and 5126.44 of the Revised Code;

(3) Funds that the department allocates to the county board for habilitation center services provided under section 5111.041 of the Revised Code;

(4) Earned federal revenue funds the county board receives for medicaid services the county board provides pursuant to the county board's valid medicaid provider agreement.

(C) If by December 31, 2001, the United States secretary of health and human services approves at least five hundred more slots for home and community-based services for calendar year 2002 than were available for calendar year 2001, each county board shall provide, by the last day of calendar year 2001, assurances to the department of mental retardation and developmental disabilities that the county board will have for calendar year 2002 at least one-third of the value of one-half, effective mill levied in the county the preceding year available to pay the nonfederal share of the services that the county board is required by division (A) of this section to pay.

If by December 31, 2002, the United States secretary approves at least five hundred more slots for home and community-based services for calendar year 2003 than were available for calendar year 2002, each county board shall provide, by the last day of calendar year 2002, assurances to the department that the county board will have for calendar year 2003 at least two-thirds of the value of one-half, effective mill levied in the county the preceding year available to pay the nonfederal share of the services that the county board is required by division (A) of this section to pay.

If by December 31, 2003, the United States secretary approves at least

five hundred more slots for home and community-based services for calendar year 2004 than were available for calendar year 2003, each county board shall provide, by the last day of calendar year 2003 and each calendar year thereafter, assurances to the department that the county board will have for calendar year 2004 and each calendar year thereafter at least the value of one-half, effective mill levied in the county the preceding year available to pay the nonfederal share of the services that the county board is required by division (A) of this section to pay.

(D) Each year, each county board shall adopt a resolution specifying the amount of funds it will use in the next year to pay the nonfederal share of the services that the county board is required by division (A) of this section to pay. The amount specified shall be adequate to assure that the services will be available in the county in a manner that conforms to all applicable state and federal laws. A county board shall state in its resolution that the payment of the nonfederal share represents an ongoing financial commitment of the county board. A county board shall adopt the resolution in time for the county auditor to make the determination required by division (E) of this section.

(E) Each year, a county auditor shall determine whether the amount of funds a county board specifies in the resolution it adopts under division (D) of this section will be available in the following year for the county board to pay the nonfederal share of the services that the county board is required by division (A) of this section to pay. The county auditor shall make the determination not later than the last day of the year before the year in which the funds are to be used.

Sec. 5126.06. (A) Except as provided in division (B) of this section and section ~~5126.035~~ 5126.036 of the Revised Code, any person who has a complaint involving any of the programs, services, policies, or administrative practices of a county board of mental retardation and developmental disabilities or any of the entities under contract with the county board, may file a complaint with the board. Prior to commencing a civil action regarding the complaint, a person shall attempt to have the complaint resolved through the administrative resolution process established in the rules adopted under section 5123.043 of the Revised Code. After exhausting the administrative resolution process, the person may commence a civil action if the complaint is not settled to the person's satisfaction.

(B) An employee of a county board may not file under this section a complaint related to the terms and conditions of employment of the employee.

Sec. 5126.14. The entity responsible for the habilitation management

included in adult day habilitation services, the program management included in residential services, and the program management included in supported living shall provide administrative oversight by doing all of the following:

(A) Having available supervisory personnel to monitor and ensure implementation of all interventions in accordance with every individual service plan implemented by the staff who work with the individuals receiving the services;

(B) Providing appropriate training and technical assistance for all staff who work with the individuals receiving services;

(C) Communicating with service and support administration staff for the purpose of coordinating activities to ensure that services are provided to individuals in accordance with individual service plans and intended outcomes;

(D) Monitoring for unusual and major unusual incidents and cases of abuse, neglect, ~~or~~ exploitation, or misappropriation of funds involving the individual under the care of staff who are providing the services; taking immediate actions as necessary to maintain the health, safety, and welfare of the individuals receiving the services; and providing notice of unusual and major unusual incidents and suspected cases of abuse, neglect, ~~or~~ exploitation, or misappropriation of funds to the ~~investigative agent for the~~ county board of mental retardation and developmental disabilities;

(E) Performing other administrative duties as required by state or federal law or by the county board of mental retardation and developmental disabilities through contracts with providers.

Sec. 5126.15. (A) A county board of mental retardation and developmental disabilities shall provide service and support administration to each individual three years of age or older who is eligible for ~~other services of the board~~ service and support administration if the individual requests, or a person on the individual's behalf requests, service and support administration. A board shall provide service and support administration to each individual receiving home and community-based services. A board may provide, in accordance with the service coordination requirements of 34 C.F.R. 303.23, service and support administration to an individual under three years of age eligible for early intervention services under 34 C.F.R. part 303. A board may provide service and support administration to an individual who is not eligible for other services of the board. Service and support administration shall be provided in accordance with rules adopted under section 5126.08 of the Revised Code.

A board may provide service and support administration by directly

employing service and support administrators or by contracting with entities for the performance of service and support administration. Individuals employed or under contract as service and support administrators shall not be in the same collective bargaining unit as employees who perform duties that are not administrative.

Individuals employed by a board as service and support administrators shall not be assigned responsibilities for implementing other services for individuals and shall not be employed by or serve in a decision-making or policy-making capacity for any other entity that provides programs or services to individuals with mental retardation or developmental disabilities. An individual employed as a conditional status service and support administrator shall perform the duties of service and support administration only under the supervision of a management employee who is a service and support administration supervisor or a professional employee who is a service and support administrator.

(B) The individuals employed by or under contract with a board to provide service and support administration shall do all of the following:

(1) Establish an individual's eligibility for the services of the county board of mental retardation and developmental disabilities;

(2) Assess individual needs for services;

(3) Develop individual service plans with the active participation of the individual to be served, other persons selected by the individual, and, when applicable, the provider selected by the individual, and recommend the plans for approval by the department of mental retardation and developmental disabilities when services included in the plans are funded through medicaid;

(4) Establish budgets for services based on the individual's assessed needs and preferred ways of meeting those needs;

(5) Assist individuals in making selections from among the providers they have chosen;

(6) Ensure that services are effectively coordinated and provided by appropriate providers;

(7) Establish and implement an ongoing system of monitoring the implementation of individual service plans to achieve consistent implementation and the desired outcomes for the individual;

(8) Perform quality assurance reviews as a distinct function of service and support administration;

(9) Incorporate the results of quality assurance reviews and identified trends and patterns of unusual incidents and major unusual incidents into amendments of an individual's service plan for the purpose of improving

and enhancing the quality and appropriateness of services rendered to the individual;

(10) Ensure that each individual receiving services has a designated person who is responsible on a continuing basis for providing the individual with representation, advocacy, advice, and assistance related to the day-to-day coordination of services in accordance with the individual's service plan. The service and support administrator shall give the individual receiving services an opportunity to designate the person to provide daily representation. If the individual declines to make a designation, the administrator shall make the designation. In either case, the individual receiving services may change at any time the person designated to provide daily representation.

(C) Subject to available funds, the department of mental retardation and developmental disabilities shall pay a county board an annual subsidy for service and support administration. The amount of the subsidy shall be equal to the greater of twenty thousand dollars or two hundred dollars times the board's certified average daily membership. The payments shall be made in semiannual installments, which shall be made no later than the thirty-first day of August and the thirty-first day of January. Funds received shall be used solely for service and support administration.

Sec. 5126.17. (A)(1) ~~Annually, on~~ On the request of the director of mental retardation and developmental disabilities, the tax commissioner shall provide to the department of mental retardation and developmental disabilities information specifying each county's taxable value.

(2) On request of the director, each county auditor shall submit a certified report to the department specifying the county's taxes and the aggregate rate of tax authorized to be levied by the board of county commissioners pursuant to division (L) of section 5705.19 and section 5705.222 of the Revised Code or the aggregate rate of tax authorized pursuant to that division and that section and certified to the county auditor under section 319.30 of the Revised Code. Tax information submitted by the county auditor shall be obtained from the most recent tax year for which the information is available.

(3) The director may request any other tax information necessary for purposes of sections 5126.16 to 5126.18 of the Revised Code.

(B) Using the information obtained under this section and each board's enrollment, the department shall annually determine the hypothetical statewide average revenue per enrollee and, for each county board, the hypothetical local revenue per enrollee. ~~This division applies only in those years in which the director determines that the department will implement~~

~~section 5126.18 of the Revised Code.~~

Sec. 5126.18. (A) The department of mental retardation and developmental disabilities shall pay to each county board of mental retardation and developmental disabilities whose hypothetical local revenue per enrollee is less than the hypothetical statewide average revenue per enrollee the amount computed under division (B) of this section. Payments shall be made on or before the thirtieth day of September.

(B) Except as provided in division (C) of this section, the amount to be paid to a county board shall be equal to the following:

(1) If the county board's effective tax rate is equal to or greater than one mill, the product obtained by multiplying the following two quantities:

(a) The amount by which the hypothetical statewide average revenue per enrollee exceeds the county board's hypothetical local revenue per enrollee;

(b) The county board's infant and adult enrollment.

(2) If the county board's effective tax rate is less than one mill, the product obtained by multiplying the following three quantities:

(a) The amount by which the hypothetical statewide average revenue per enrollee exceeds the county board's hypothetical local revenue per enrollee;

(b) The county board's infant and adult enrollment;

(c) The quotient obtained by dividing the county board's effective tax rate by one mill.

(C)(1) For each individual who is enrolled in active treatment under the community alternative funding system as defined in section 5126.12 of the Revised Code, the department may reduce the portion of the payment made under this section for that individual by fifty per cent or less.

(2) If, in any year, an appropriation by the general assembly to the department for purposes of this section is less than the total amount required to make, in full, the payments as determined under and authorized by this section, the department shall pay each county board the same percentage of the board's payment as determined under this section without regard to this division that the amount of the appropriation available for purposes of this section is of the total amount of payments as determined under this section without regard to this division.

(3) Payments made to a county board pursuant to this section shall not exceed thirty per cent of the payments made to that board pursuant to section 5126.12 of the Revised Code.

(D) Payments made under this section are supplemental to all other state or federal funds for which county boards are eligible and shall be made from

funds appropriated for purposes of this section. A county board shall use the payments solely to pay the nonfederal share of medicaid expenditures that division (A) of section ~~5126.056~~ 5126.057 of the Revised Code requires the county board to pay.

(E) Each county board that receives a payment under this section shall, for each year it receives a payment, certify to the department that it will make a good faith effort to obtain revenues, including federal funds, for services to individuals included in its infant and adult enrollment.

Sec. 5126.19. (A) The director of mental retardation and developmental disabilities may grant temporary funding from the community mental retardation and developmental disabilities trust fund based on allocations to a county ~~board~~ boards of mental retardation and developmental disabilities. ~~With the consent of the county board, the~~ The director may distribute all or part of the funding directly to a county board, the persons who provide the services for which the funding is granted, or persons with mental retardation or developmental disabilities who are to receive those services.

(B) Funding granted under division (A) of this section shall be granted according to the availability of moneys in the fund and priorities established by the director. Funding may be granted for any of the following purposes:

(1) Behavioral or short-term interventions for persons with mental retardation or developmental disabilities that assist them in remaining in the community by preventing institutionalization;

(2) Emergency respite care services, as defined in section 5126.11 of the Revised Code;

(3) Family support services provided under section 5126.11 of the Revised Code;

(4) Supported living, as defined in section 5126.01 of the Revised Code;

(5) Staff training for county board employees, employees of providers of residential services as defined in section 5126.01 of the Revised Code, and other personnel under contract with a county board, to provide the staff with necessary training in serving mentally retarded or developmentally disabled persons in the community;

(6) Short-term provision of early childhood services provided under section 5126.05, adult services provided under sections 5126.05 and 5126.051, and service and support administration provided under section 5126.15 of the Revised Code, when local moneys are insufficient to meet the need for such services due to the successive failure within a two-year period of three or more proposed levies for the services;

(7) Contracts with providers of residential services to maintain persons with mental retardation and developmental disabilities in their programs and

avoid institutionalization.

(C) If the trust fund contains more than ten million dollars on the first day of July the director shall use one million dollars for payments under section 5126.12 of the Revised Code, one million dollars for payments under section 5126.18 of the Revised Code, and two million dollars for payments under section 5126.44 of the Revised Code. Distributions of funds under this division shall be made prior to August 31 of the state fiscal year in which the funds are available. The funds shall be ~~distributed~~ allocated to a county board in an amount equal to the same percentage of the total amount ~~distributed for the services that~~ allocated to the county board ~~received in the~~ immediately preceding state fiscal year.

(D) In addition to making grants under division (A) of this section, the director may use money available in the trust fund for the same purposes that rules adopted under section 5123.0413 of the Revised Code provide for money in the state MR/DD risk fund and the state insurance against MR/DD risk fund, both created under that section, to be used.

Sec. 5126.221. Each county board of mental retardation and developmental disabilities shall employ at least one investigative agent or contract with a person or government entity, including another county board of mental retardation and developmental disabilities or a regional council established under section 5126.13 of the Revised Code, for the services of an investigative agent. Neither a county board nor a person or government entity with which a county board contracts for the services of an investigative agent shall assign any duties to an investigative agent other than conducting investigations under section 5126.313 of the Revised Code.

All investigative agents shall be trained in civil and criminal investigatory practices ~~and~~. The person responsible for supervising the work of the investigative agents shall report directly to a county board's superintendent regarding the investigative agents. ~~No~~

No investigative agent shall do anything that interferes with the investigative agent's objectivity in conducting investigations under section 5126.313 of the Revised Code.

Sec. 5126.357. (A) As used in this section:

(1) "In-home care" means the supportive services provided within the home of an individual who receives funding for the services as a county board client, including any client who receives residential services funded through home ~~or~~ and community-based services, family support services provided under section 5126.11 of the Revised Code, or supported living provided in accordance with sections 5126.41 to 5126.47 of the Revised Code. "In-home care" includes care that is provided outside a client's home

in places incidental to the home, and while traveling to places incidental to the home, except that "in-home care" does not include care provided in the facilities of a county board of mental retardation and developmental disabilities or care provided in schools.

(2) "Parent" means either parent of a child, including an adoptive parent but not a foster parent.

(3) "Unlicensed in-home care worker" means an individual who provides in-home care but is not a health care professional. A county board worker may be an unlicensed in-home care worker.

(4) "Family member" means a parent, sibling, spouse, son, daughter, grandparent, aunt, uncle, cousin, or guardian of the individual with mental retardation or a developmental disability if the individual with mental retardation or developmental disabilities lives with the person and is dependent on the person to the extent that, if the supports were withdrawn, another living arrangement would have to be found.

(B) Except as provided in division (D) of this section, a family member of an individual with mental retardation or a developmental disability may authorize an unlicensed in-home care worker to give or apply prescribed medication or perform other health care tasks as part of the in-home care provided to the individual, if the family member is the primary supervisor of the care and the unlicensed in-home care worker has been selected by the family member and is under the direct supervision of the family member. Sections 4723.62 and 5126.351 to 5126.356 of the Revised Code do not apply to the in-home care authorized by a family member under this section. Instead, a family member shall obtain a prescription, if applicable, and written instructions from a health care professional for the care to be provided to the individual. The family member shall authorize the unlicensed in-home care worker to provide the care by preparing a written document granting the authority. The family member shall provide the unlicensed in-home care worker with appropriate training and written instructions in accordance with the instructions obtained from the health care professional.

(C) A family member who authorizes an unlicensed in-home care worker to give or apply prescribed medication or perform other health care tasks retains full responsibility for the health and safety of the individual receiving the care and for ensuring that the worker provides the care appropriately and safely. No entity that funds or monitors the provision of in-home care may be held liable for the results of the care provided under this section by an unlicensed in-home care worker, including such entities as the county board of mental retardation and developmental disabilities, any

other entity that employs an unlicensed in-home care worker, and the department of mental retardation and developmental disabilities.

An unlicensed in-home care worker who is authorized under this section by a family member to provide care to an individual may not be held liable for any injury caused in providing the care, unless the worker provides the care in a manner that is not in accordance with the training and instructions received or the worker acts in a manner that constitutes wanton or reckless misconduct.

(D) A county board of mental retardation and developmental disabilities may evaluate the authority granted by a family member under this section to an unlicensed in-home care worker at any time it considers necessary and shall evaluate the authority on receipt of a complaint. If the board determines that a family member has acted in a manner that is inappropriate for the health and safety of the individual receiving the services, the authorization granted by the family member to an unlicensed in-home care worker is void, and the family member may not authorize other unlicensed in-home care workers to provide the care. In making such a determination, the board shall use appropriately licensed health care professionals and shall provide the family member an opportunity to file a complaint under section 5126.06 of the Revised Code.

Sec. 5505.01. As used in this chapter:

(A) "Employee" means any qualified employee in the uniform division of the state highway patrol, any qualified employee in the radio division hired prior to November 2, 1989, and any state highway patrol cadet attending training school pursuant to section 5503.05 of the Revised Code whose attendance at the school begins on or after June 30, 1991. "Employee" includes the superintendent of the state highway patrol. In all cases of doubt, the state highway patrol retirement board shall determine whether any person is an employee as defined in this division, and the decision of the board is final.

(B) "Prior service" means all service rendered as an employee of the state highway patrol prior to September 5, 1941, to the extent credited by the board, provided that in no case shall prior service include service rendered prior to November 15, 1933.

(C) "Total service" means all service rendered by an employee to the extent credited by the board. Total service includes all of the following:

- (1) Contributing service rendered by the employee since last becoming a member of the state highway patrol retirement system;
- (2) All prior service credit;
- (3) Restored service credit as provided in this chapter;

(4) Military service credit purchased under division (D) of section 5505.16 or section 5505.25 of the Revised Code;

(5) Credit granted under division (C) of section 5505.17 or section 5505.201, 5505.40, or 5505.402 of the Revised Code;

(6) Credit for any period, not to exceed three years, during which the member was out of service and receiving benefits under Chapters 4121. and 4123. of the Revised Code.

(D) "Beneficiary" means any person, except a retirant, who is in receipt of a pension or other benefit payable from funds of the retirement system.

(E) "Regular interest" means interest compounded at rates designated from time to time by the retirement board.

(F) "Plan" means the provisions of this chapter.

(G) "Retirement system" or "system" means the state highway patrol retirement system created and established in the plan.

(H) "Contributing service" means all service rendered by a member since September 4, 1941, for which deductions were made from the member's salary under the plan.

(I) "Retirement board" or "board" means the state highway patrol retirement board provided for in the plan.

(J) Except as provided in section 5505.18 of the Revised Code, "member" means any employee included in the membership of the retirement system, whether or not rendering contributing service.

(K) "Retirant" means any member who retires with a pension payable from the retirement system.

(L) "Accumulated contributions" means the sum of all amounts deducted from the salary of a member and credited to the member's individual account in the employees' savings fund.

(M)(1) Except as provided in division (M)(2) of this section, "final average salary" means the average of the highest salary paid a member during any three consecutive or nonconsecutive years.

If a member has less than three years of contributing service, the member's final average salary shall be the average of the annual rates of salary paid to the member during the member's total years of contributing service.

(2) If a member is credited with service under division (C)(6) of this section or division (D) of section 5505.16 of the Revised Code, the member's final average salary shall be the average of the highest salary that was paid to the member or would have been paid to the member, had the member been rendering contributing service, during any three consecutive or nonconsecutive years. If that member has less than three years of total

service, the member's final average salary shall be the average of the annual rates of salary that were paid to the member or would have been paid to the member during the member's years of total service.

(N) "Pension" means an annual amount payable by the retirement system throughout the life of a person or as otherwise provided in the plan. All pensions shall be paid in equal monthly installments.

(O) "Pension reserve" means the present value of any pension, or benefit in lieu of any pension, computed upon the basis of mortality and other tables of experience and interest the board shall from time to time adopt.

(P) "Deferred pension" means a pension for which an eligible member of the system has made application and which is payable as provided in division (A) or (B) of section 5505.16 of the Revised Code.

(Q) "Retirement" means termination as an employee of the state highway patrol, with application having been made to the system for a pension or a deferred pension.

(R) "Fiduciary" means any of the following:

(1) A person who exercises any discretionary authority or control with respect to the management of the system, or with respect to the management or disposition of its assets;

(2) A person who renders investment advice for a fee, direct or indirect, with respect to money or property of the system;

(3) A person who has any discretionary authority or responsibility in the administration of the system.

(S)(1) Except as otherwise provided in this division, "salary" means all compensation, wages, and other earnings paid to a member by reason of employment but without regard to whether any of the compensation, wages, or other earnings are treated as deferred income for federal income tax purposes. Salary includes all of the following:

(a) Payments for shift differential, hazard duty, professional achievement, and longevity;

(b) Payments for occupational injury leave, personal leave, sick leave, bereavement leave, administrative leave, and vacation leave used by the member;

(c) Payments made under a disability leave program sponsored by the state for which the state is required by section 5505.151 of the Revised Code to make periodic employer and employee contributions to the retirement system.

(2) "Salary" does not include any of the following:

(a) Payments resulting from the conversion of accrued but unused sick leave, personal leave, compensatory time, and vacation leave;

(b) Payments made by the state to provide life insurance, sickness, accident, endowment, health, medical, hospital, dental, or surgical coverage, or other insurance for the member or the member's family, or amounts paid by the state to the member in lieu of providing that insurance;

(c) Payments for overtime work;

(d) Incidental benefits, including lodging, food, laundry, parking, or services furnished by the state, use of property or equipment of the state, and reimbursement for job-related expenses authorized by the state including moving and travel expenses and expenses related to professional development;

(e) Payments made to or on behalf of a member that are in excess of the annual compensation that may be taken into account by the retirement system under division (a)(17) of section 401 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 401 (a)(17), as amended;

(f) Payments made under division (B), (C), or (E) of section 5923.05 of the Revised Code, Section 4 of Substitute Senate Bill No. 3 of the 119th general assembly, ~~or~~ Section 3 of Amended Substitute Senate Bill No. 173 164 of the 124th general assembly, or Amended Substitute House Bill No. 405 of the 124th general assembly.

(3) The retirement board shall determine by rule whether any compensation, wages, or earnings not enumerated in this division are salary, and its decision shall be final.

(T) "Actuary" means an individual who satisfies all of the following requirements:

(1) Is a member of the American academy of actuaries;

(2) Is an associate or fellow of the society of actuaries;

(3) Has a minimum of five years' experience in providing actuarial services to public retirement plans.

Sec. 5705.44. When contracts or leases run beyond the termination of the fiscal year in which they are made, the fiscal officer of the taxing authority shall make a certification for the amount required to meet the obligation of such contract or lease maturing in such fiscal year. The amount of the obligation under such contract or lease remaining unfulfilled at the end of a fiscal year, and which will become payable during the next fiscal year, shall be included in the annual appropriation measure for the next year as a fixed charge.

The certificate required by section 5705.41 of the Revised Code as to money in the treasury shall not be required for contracts on which payments are to be made from the earnings of a publicly operated water works or public utility, but in the case of any such contract made without such

rtification, no payment shall be made on account thereof, and no claim or demand thereon shall be recoverable, except out of such earnings. That certificate also shall not be required if requiring the certificate makes it impossible for a county board of mental retardation and developmental disabilities to pay the nonfederal share of medicaid expenditures that the county board is required by division (A) of section ~~5126.056~~ 5126.057 of the Revised Code to pay.

Sec. 5709.12. (A) As used in this section, "independent living facilities" means any residential housing facilities and related property that are not a nursing home, residential care facility, or adult care facility as defined in division (A) of section 5701.13 of the Revised Code.

(B) Lands, houses, and other buildings belonging to a county, township, or municipal corporation and used exclusively for the accommodation or support of the poor, or leased to the state or any political subdivision for public purposes shall be exempt from taxation. Real and tangible personal property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation, including real property belonging to an institution that is a nonprofit corporation that receives a grant under the Thomas Alva Edison program authorized by division (C) of section 122.33 of the Revised Code at any time during the tax year and being held for leasing or resale to others. If, at any time during a tax year for which such property is exempted from taxation, the corporation ceases to qualify for such a grant, the director of development shall notify the tax commissioner, and the tax commissioner shall cause the property to be restored to the tax list beginning with the following tax year. All property owned and used by a nonprofit organization exclusively for a home for the aged, as defined in section 5701.13 of the Revised Code, also shall be exempt from taxation.

(C) If a home for the aged is operated in conjunction with or at the same site as independent living facilities, the exemption granted in division (B) of this section shall include kitchen, dining room, clinic, entry ways, maintenance and storage areas, and land necessary for access commonly used by both residents of the home for the aged and residents of the independent living facilities. Other facilities commonly used by both residents of the home for the aged and residents of independent living units shall be exempt from taxation only if the other facilities are used primarily by the residents of the home for the aged. Vacant land currently unused by the home, and independent living facilities and the lands connected with them are not exempt from taxation. Except as provided in division (A) of section 5709.121 of the Revised Code, property of a home leased for nonresidential purposes is not exempt from taxation.

(D)(1) A private corporation established under federal law, defined in 36 U.S.C. 1101, Pub. L. No. 102-199, 105 Stat. 1629, as amended, the objects of which include encouraging the advancement of science generally, or of a particular branch of science, the promotion of scientific research, the improvement of the qualifications and usefulness of scientists, or the increase and diffusion of scientific knowledge is conclusively presumed to be a charitable or educational institution. A private corporation established as a nonprofit corporation under the laws of a state, that is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C.A. 1, as amended, and has as its principal purpose one or more of the foregoing objects, also is conclusively presumed to be a charitable or educational institution.

The fact that an organization described in this division operates in a manner that results in an excess of revenues over expenses shall not be used to deny the exemption granted by this section, provided such excess is used, or is held for use, for exempt purposes or to establish a reserve against future contingencies; and, provided further, that such excess may not be distributed to individual persons or to entities that would not be entitled to the tax exemptions provided by this chapter. Nor shall the fact that any scientific information diffused by the organization is of particular interest or benefit to any of its individual members be used to deny the exemption granted by this section, provided that such scientific information is available to the public for purchase or otherwise.

(2) Division (D)(2) of this section does not apply to real property exempted from taxation under this section and division (C) of section 5709.121 of the Revised Code and belonging to a nonprofit corporation described in division (D)(1) of this section that has received a grant under the Thomas Alva Edison grant program authorized by division (C) of section 122.33 of the Revised Code during any of the tax years the property was exempted from taxation.

When a private corporation as described in ~~this~~ division (D)(1) of this section sells all or any portion of a tract, lot, or parcel of real estate that has been exempt from taxation under this section and section 5709.121 of the Revised Code, the portion sold shall be restored to the tax list for the year following the year of the sale and a charge shall be levied against the sold property in an amount equal to the tax savings on such property during the four tax years preceding the year the property is placed on the tax list. The tax savings equals the amount of the additional taxes that would have been levied if such property had not been exempt from taxation.

The charge constitutes a lien of the state upon such property as of the

first day of January of the tax year in which the charge is levied and continues until discharged as provided by law. The charge may also be remitted for all or any portion of such property that the tax commissioner determines is entitled to exemption from real property taxation for the year such property is restored to the tax list under any provision of the Revised Code, other than sections 725.02, 1728.10, 3735.67, 5709.40, 5709.41, 5709.62, 5709.63, 5709.71, 5709.73, 5709.78, and 5709.84, upon an application for exemption covering the year such property is restored to the tax list filed under section 5715.27 of the Revised Code.

(E) Real property held by an organization organized and operated exclusively for charitable purposes as described under section 501(c)(3) of the Internal Revenue Code and exempt from federal taxation under section 501(a) of the Internal Revenue Code, 26 U.S.C.A. 501(a) and (c)(3), as amended, for the purpose of constructing or rehabilitating residences for eventual transfer to qualified low-income families through sale, lease, or land installment contract, shall be exempt from taxation.

The exemption shall commence on the day title to the property is transferred to the organization and shall continue to the end of the tax year in which the organization transfers title to the property to a qualified low-income family. In no case shall the exemption extend beyond the second succeeding tax year following the year in which the title was transferred to the organization. If the title is transferred to the organization and from the organization to a qualified low-income family in the same tax year, the exemption shall continue to the end of that tax year. The proportionate amount of taxes that are a lien but not yet determined, assessed, and levied for the tax year in which title is transferred to the organization shall be remitted by the county auditor for each day of the year that title is held by the organization.

Upon transferring the title to another person, the organization shall file with the county auditor an affidavit affirming that the title was transferred to a qualified low-income family or that the title was not transferred to a qualified low-income family, as the case may be; if the title was transferred to a qualified low-income family, the affidavit shall identify the transferee by name. If the organization transfers title to the property to anyone other than a qualified low-income family, the exemption, if it has not previously expired, shall terminate, and the property shall be restored to the tax list for the year following the year of the transfer and a charge shall be levied against the property in an amount equal to the amount of additional taxes that would have been levied if such property had not been exempt from taxation. The charge constitutes a lien of the state upon such property as of

the first day of January of the tax year in which the charge is levied and continues until discharged as provided by law.

The application for exemption shall be filed as otherwise required under section 5715.27 of the Revised Code, except that the organization holding the property shall file with its application documentation substantiating its status as an organization organized and operated exclusively for charitable purposes under section 501(c)(3) of the Internal Revenue Code and its qualification for exemption from federal taxation under section 501(a) of the Internal Revenue Code, and affirming its intention to construct or rehabilitate the property for the eventual transfer to qualified low-income families.

As used in this division, "qualified low-income family" means a family whose income does not exceed two hundred per cent of the official federal poverty guidelines as revised annually in accordance with section 673(2) of the "Omnibus Budget Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C.A. 9902, as amended, for a family size equal to the size of the family whose income is being determined.

Sec. 5709.121. Real property and tangible personal property belonging to a charitable or educational institution or to the state or a political subdivision, shall be considered as used exclusively for charitable or public purposes by such institution, the state, or political subdivision, if it meets one of the following requirements:

(A) It is used by such institution, the state, or political subdivision, or by one or more other such institutions, the state, or political subdivisions under a lease, sublease, or other contractual arrangement:

(1) As a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein;

(2) For other charitable, educational, or public purposes;

(B) It is made available under the direction or control of such institution, the state, or political subdivision for use in furtherance of or incidental to its charitable, ~~educational~~ educational, or public purposes and not with the view to profit.

(C) It is used by an organization described in division (D) of section 5709.12 of the Revised Code. If the organization is a corporation that receives a grant under the Thomas Alva Edison grant program authorized by division (C) of section 122.33 of the Revised Code at any time during the tax year, "used," for the purposes of this division, includes holding property for lease or resale to others.

Sec. 5709.17. (A) Real estate held or occupied by an association or

corporation, organized or incorporated under the laws of this state relative to soldiers' memorial associations, monumental building associations, or cemetery associations or corporations, which in the opinion of the trustees, directors, or managers thereof is necessary and proper to carry out the object intended for such association or corporation, shall be exempt from taxation.

(B) Real estate and tangible personal property held or occupied by a war veterans' organization, which is organized exclusively for charitable purposes and incorporated under the laws of this state or the United States, except real estate held by such organization for the production of rental income, shall be exempt from taxation.

(C) Tangible personal property held by a corporation chartered under 112 Stat. 1335, 36 U.S.C.A. 40701, described in section 501(c)(3) of the Internal Revenue Code, and exempt from taxation under section 501(a) of the Internal Revenue Code shall be exempt from taxation if it is ~~surplus~~ property obtained as described in 112 Stat. ~~1340~~ 1335-1341, 36 U.S.C.A. ~~40730~~ Chapter 407.

Sec. 5709.40. (A) As used in this section:

(1) "Blighted area" and "impacted city" have the same meanings as in section 1728.01 of the Revised Code.

(2) "Business day" means a day of the week excluding Saturday, Sunday, and a legal holiday as defined under section 1.14 of the Revised Code.

(3) "Housing renovation" means a project carried out for residential purposes.

~~(2)~~(4) "Improvement" means the increase in the assessed value of any a parcel of real property that would first appear on the tax list and duplicate of real and public utility property subsequent to after the effective date of an ordinance adopted under this section were it not for the exemption specified granted by that ordinance. "Improvement" does not include a public infrastructure improvement.

(5) "Incentive district" means an area not more than three hundred acres in size enclosed by a continuous boundary and having one or more of the following distress characteristics:

(a) At least fifty-one per cent of the residents of the district have incomes of less than eighty per cent of the median income of residents of the political subdivision in which the district is located, as determined in the same manner specified under section 119(b) of the "Housing and Community Development Act of 1974," 88 Stat. 633, 42 U.S.C. 5318, as amended;

(b) The average rate of unemployment in the district during the most

recent twelve-month period for which data are available is equal to at least one hundred fifty per cent of the average rate of unemployment for this state for the same period.

(c) At least twenty per cent of the people residing in the district live at or below the poverty level as defined in the federal Housing and Community Development Act of 1974, 42 U.S.C. 5301, as amended, and regulations adopted pursuant to that act.

(d) The district is a blighted area.

(e) The district is in a situational distress area as designated by the director of development under division (F) of section 122.23 of the Revised Code.

(f) As certified by the engineer for the political subdivision, the public infrastructure serving the district is inadequate to meet the development needs of the district as evidenced by a written economic development plan or urban renewal plan for the district that has been adopted by the legislative authority of the subdivision.

(g) The district is comprised entirely of unimproved land that is located in a distressed area as defined in section 122.23 of the Revised Code.

(6) "Project" means development activities undertaken on one or more parcels, including, but not limited to, construction, expansion, and alteration of buildings or structures, demolition, remediation, and site development, and any building or structure that results from those activities.

(7) "Public infrastructure improvement" includes, but is not limited to, public roads and highways; water and sewer lines; environmental remediation; land acquisition, including acquisition in aid of industry, commerce, distribution, or research; demolition, including demolition on private property when determined to be necessary for economic development purposes; stormwater and flood remediation projects, including such projects on private property when determined to be necessary for public health, safety, and welfare; the provision of gas, electric, and communications service facilities; and the enhancement of public waterways through improvements that allow for greater public access.

(B) The legislative authority of a municipal corporation, by ordinance, may declare improvements to ~~a parcel~~ certain parcels of real property located in the municipal corporation to be a public purpose. Improvements with respect to a parcel that is used or to be used for residential purposes may be declared a public purpose under this ~~section~~ division only if the parcel is located in a blighted area of an impacted city ~~as those terms are defined in section 1728.01 of the Revised Code~~. Except as otherwise provided in division ~~(B)(1), (2), or (3)~~ (D) of this section, not more than

seventy-five per cent of an improvement thus declared to be a public purpose may be exempted from real property taxation; the percentage exempted shall not, except as otherwise provided in that division (B)(1), (2), or (3) of this section, exceed the estimated percentage of the incremental demand placed on the public infrastructure improvements that is directly attributable to the exempted improvement. The ordinance shall specify the percentage of the improvement to be exempted from taxation.

An ordinance adopted or amended under this division shall designate the specific public infrastructure improvements made, to be made, or in the process of being made by the municipal corporation that directly benefit, or that once made will directly benefit, the parcels for which improvements are declared to be a public purpose. For the purposes of this division, a public infrastructure improvement directly benefits such a parcel only if a project on the parcel places direct, additional demand on the public infrastructure improvement or, if the public infrastructure improvement has not yet been completed, will place direct, additional demand on the public infrastructure improvement once it is completed. The service payments provided for in section 5709.42 of the Revised Code shall be used to finance the public infrastructure improvements designated in the ordinance or for the purpose described in division (D)(1) of this section.

(C) The legislative authority of a municipal corporation may adopt an ordinance creating an incentive district and declaring improvements to parcels within the district to be a public purpose and exempt from taxation as provided in this section. The ordinance shall delineate the boundary of the district and specifically identify each parcel within the district. A district may not include any parcel that is or has been exempted from taxation under division (B) of this section or that is or has been within another district created under this division. An ordinance may create more than one such district, and more than one ordinance may be adopted under this division.

An ordinance under this division shall specify the life of the district and the percentage of the improvements to be exempted and shall designate the public infrastructure improvements made or to be made that benefit or serve parcels in the district. The service payments provided for in section 5709.42 of the Revised Code shall be used to finance the designated public infrastructure improvements or for the purpose described in division (D)(1) of this section.

An ordinance adopted under this division may authorize the use of service payments provided for in section 5709.42 of the Revised Code for the purpose of housing renovations within the district, provided that the ordinance also designates public infrastructure improvements that benefit or

serve the district, and that a project within the district places real property in use for commercial or industrial purposes. Service payments may be used to finance or support loans, deferred loans, and grants to persons for the purpose of housing renovations within the district. The ordinance shall designate the parcels within the district that are eligible for housing renovation. The ordinance shall state separately the amounts or the percentages of the expected aggregate service payments that are designated for each public infrastructure improvement and for the general purpose of housing renovations.

Except with the approval of the board of education of each city, local, or exempted village school district within the territory of which the district is or will be located, the life of a district shall not exceed ten years, and the percentage of improvements to be exempted shall not exceed seventy-five per cent. With such approval, the life of a district may be not more than thirty years, and the percentage of improvements to be exempted may be not more than one hundred per cent.

Approval of a board of education shall be obtained in the manner provided in division (D) of this section for exemptions under division (B) of this section, except that the notice to the board of education shall delineate the boundaries of the district, specifically identify each parcel within the district, identify each anticipated improvement in the district, provide an estimate of the true value in money of each such improvement, specify the life of the district and the percentage of improvements that would be exempted, and indicate the date on which the legislative authority intends to adopt the ordinance.

A municipal corporation shall not adopt an ordinance under this division after June 30, 2007.

(D)(1) If the ordinance declaring improvements to a parcel to be a public purpose or creating an incentive district specifies that payments in lieu of taxes provided for in section 5709.42 of the Revised Code shall be paid to the city, local, or exempted village school district in which the parcel is located in the amount of the taxes that would have been payable to the school district if the improvements had not been exempted from taxation, the percentage of the improvement that may be exempted from taxation may exceed seventy-five per cent, and the exemption may be granted for up to thirty years, without the approval of the board of education as otherwise required under division ~~(B)~~(D)(2) of this section.

(2) Improvements with respect to a parcel may be exempted from taxation under division (B) of this section for up to ten years or, with the approval under this paragraph of the board of education of the city, local, or

exempted village school district within ~~the territory of~~ which the ~~improvements are or will be~~ parcel is located, for up to thirty years. The percentage of the improvement exempted from taxation may, with such approval, exceed seventy-five per cent, but shall not exceed one hundred per cent. Not later than forty-five business days prior to adopting an ordinance under this section declaring improvements to be a public purpose, the legislative authority shall deliver to the board of education a notice stating its intent to ~~declare improvements to be a public purpose under this section~~ adopt an ordinance making that declaration. The notice shall ~~describe~~ identify the ~~parcel and the improvements~~ parcels for which improvements are to be exempted from taxation, provide an estimate of the true value in money of the improvements, specify the period for which the improvements would be exempted from taxation and the percentage of the improvement that would be exempted, and indicate the date on which the legislative authority intends to adopt the ordinance. The board of education, by resolution adopted by a majority of the board, may approve the exemption for the period or for the exemption percentage specified in the notice, may disapprove the exemption for the number of years in excess of ten, may disapprove the exemption for the percentage of the improvement to be exempted in excess of seventy-five per cent, or both, or may approve the exemption on the condition that the legislative authority and the board negotiate an agreement providing for compensation to the school district equal in value to a percentage of the amount of taxes exempted in the eleventh and subsequent years of the exemption period or, in the case of exemption percentages in excess of seventy-five per cent, compensation equal in value to a percentage of the taxes that would be payable on the portion of the improvement in excess of seventy-five per cent were that portion to be subject to taxation. The board of education shall certify its resolution to the legislative authority not later than fourteen days prior to the date the legislative authority intends to adopt the ordinance as indicated in the notice. If the board of education approves the exemption on the condition that a compensation agreement be negotiated, the board in its resolution shall propose a compensation percentage. If the board of education and the legislative authority negotiate a mutually acceptable compensation agreement, the ordinance may declare the improvements a public purpose for the number of years specified in the ordinance or, in the case of exemption percentages in excess of seventy-five per cent, for the exemption percentage specified in the ordinance. In either case, if the board and the legislative authority fail to negotiate a mutually acceptable compensation agreement, the ordinance may declare the improvements a

public purpose for not more than ten years, but shall not exempt more than seventy-five per cent of the improvements from taxation, or, in the case of an ordinance adopted under division (B) of this section, not more than the estimated percentage of the incremental demand as otherwise permitted ~~under prescribed by division (B)(4) of this section, whichever is if that percentage is less than seventy-five per cent.~~ If the board fails to certify a resolution to the legislative authority within the time prescribed by this division, the legislative authority thereupon may adopt the ordinance and may declare the improvements a public purpose for up to thirty years, or, in the case of exemption percentages proposed in excess of seventy-five per cent, for the exemption percentage specified in the ordinance. The legislative authority may adopt the ordinance at any time after the board of education certifies its resolution approving the exemption to the legislative authority, or, if the board approves the exemption on the condition that a mutually acceptable compensation agreement be negotiated, at any time after the compensation agreement is agreed to by the board and the legislative authority.

(3) If a board of education has adopted a resolution waiving its right to approve exemptions from taxation and the resolution remains in effect, approval of exemptions by the board is not required under this division. If a board of education has adopted a resolution allowing a legislative authority to deliver the notice required under this division fewer than forty-five business days prior to the legislative authority's adoption of the ordinance, the legislative authority shall deliver the notice to the board not later than the number of days prior to such adoption as prescribed by the board in its resolution. If a board of education adopts a resolution waiving its right to approve agreements or shortening the notification period, the board shall certify a copy of the resolution to the legislative authority. If the board of education rescinds such a resolution, it shall certify notice of the rescission to the legislative authority.

(4) If the legislative authority is not required by division ~~(B)(D)~~(1), (2), or (3) of this section to notify the board of education of the legislative authority's intent to declare improvements to be a public purpose, the legislative authority shall comply with the notice requirements imposed under section 5709.83 of the Revised Code, unless the board has adopted a resolution under that section waiving its right to receive such a notice.

~~(C) The~~ (E) An exemption from taxation granted under this section commences on with the tax year in which an improvement first appears on the tax list and duplicate of real and public utility property and that begins after the effective date of the ordinance and. Except as otherwise provided in

this division, the exemption ends on the date specified in the ordinance as the date the improvement ceases to be a public purpose or the incentive district expires, or ends on the date on which the public infrastructure improvements and housing renovations are paid in full from the municipal public improvement tax increment equivalent fund established under division (A) of section 5709.43 of the Revised Code, whichever occurs first; unless, The exemption of an improvement with respect to a parcel may end on a later date, as specified in the ordinance, if the legislative authority and the board of education of the city, local, or exempted village school district within the territory of which the exempted improvement parcel is located have entered into a compensation agreement under section 5709.82 of the Revised Code with respect to the improvement or district and the board of education has approved the term of the exemption under division (B)(D)(2) of this section. If the legislative authority and the board of education have entered into such an agreement, the exemption may end on a date, specified in the ordinance, later than the date on which the improvements are paid in full from the municipal public improvement tax increment equivalent fund, but in no case shall the improvement be exempted from taxation for more than thirty years. The exemption Exemptions shall be claimed and allowed in the same manner as in the case of other real property exemptions. If an exemption status changes during a year, the procedure for the apportionment of the taxes for that year is the same as in the case of other changes in tax exemption status during the year.

~~(D) The ordinance shall designate specific public improvements made, to be made, or in the process of being made by the municipal corporation that directly benefit, or that once made will directly benefit, the parcel. A public improvement directly benefits a tract or parcel of land only if improvements made to the tract or parcel place direct, additional demand on the public improvement, or, if the public improvement has not yet been constructed, will place direct, additional demand on the public improvement when completed. The service payments provided for in section 5709.42 of the Revised Code shall be used to finance the public improvements designated in the ordinance. (F) Additional municipal financing of the public infrastructure improvements and housing renovations may be provided by any methods that the municipal corporation may otherwise use for financing such improvements. If the municipal corporation issues bonds or notes to finance the public infrastructure improvements and housing renovations and pledges money from the municipal public improvement tax increment equivalent fund to pay the interest on and principal of the bonds or notes, the bonds or notes are not subject to Chapter 133. of the Revised~~

Code.

~~(E)~~(G) The municipal corporation, not later than fifteen days after the adoption of ~~the an~~ ordinance ~~granting a tax exemption~~ under this section, shall submit to the director of development a copy of the ordinance. On or before the thirty-first day of March ~~of~~ each year, the municipal corporation shall submit a status report to the director of development ~~outlining. The report shall indicate, in the manner prescribed by the director, the progress of the project during each year that the an exemption remains in effect, including a summary of the receipts from service payments in lieu of taxes; expenditures of money from the funds created under section 5709.43 of the Revised Code; a description of the public infrastructure improvements and housing renovations financed with such expenditures; and a quantitative summary of changes in employment and private investment resulting from each project.~~

(H) Nothing in this section shall be construed to prohibit a legislative authority from declaring to be a public purpose improvements with respect to more than one parcel.

Sec. 5709.411. (A) As used in this section, "detached improvement" means an improvement as defined in section 5709.41 of the Revised Code that satisfies all of the following:

(1) The ordinance declaring the improvement to be a public purpose was adopted under section 5709.41 of the Revised Code by a municipal corporation that is a party to a contract creating a joint economic development district under section 715.70 or 715.71 of the Revised Code.

(2) The improvement relates to a parcel of property located in territory that is detached by that municipal corporation to a township that is a party to the same contract creating the joint economic development district, pursuant to that contract and section 709.38 of the Revised Code.

(3) The ordinance declaring the improvements to be a public purpose is adopted prior to the detachment of that territory.

(B) The exemption from taxation for detached improvements under section 5709.41 of the Revised Code shall continue for the period prescribed in that section and the ordinance under which the improvements are declared to be a public purpose, or any amendments to the ordinance, even if the detachment occurs prior to the end of that period.

(C)(1) The municipal corporation may require the owner of any building or structure located on a parcel to which the detached improvement relates to pay service payments in lieu of taxes under section 5709.42 of the Revised Code after the territory including the detached improvement is

detached. The service payments shall be distributed to the municipal corporation as provided in that section.

(2) The municipal corporation may use the service payments received under division (C)(1) of this section as prescribed by section 5709.43 of the Revised Code and the ordinance declaring the detached improvements to be a public purpose. The legislative authority of the municipal corporation may amend the ordinance to permit the service payments to be used to pay the cost of streets, roads, water lines, sewers, and other public infrastructure improvements as defined in section 5709.40 of the Revised Code extending from the municipal corporation to the detached territory or to the joint economic development district, or located on the detached territory or in the joint economic development district, or to pay debt service charges on securities issued by the municipal corporation to finance those public infrastructure improvements.

Sec. 5709.43. (A) A municipal corporation that grants a tax exemption under section 5709.40 of the Revised Code shall establish a municipal public improvement tax increment equivalent fund, ~~by ordinance of its legislative authority,~~ into which shall be deposited service payments in lieu of taxes distributed to the municipal corporation ~~by the county treasurer as provided in under~~ section 5709.42 of the Revised Code ~~for improvements exempt from taxation pursuant to an ordinance under section 5709.40 of the Revised Code. If the legislative authority of the municipal corporation has adopted an ordinance under division (C) of section 5709.40 of the Revised Code, the municipal corporation shall establish at least one account in that fund with respect to ordinances adopted under division (B) of that section, and one account with respect to each district created in an ordinance adopted under division (C) of that section. If an ordinance adopted under division (C) of section 5709.40 of the Revised Code also authorizes the use of service payments for housing renovations within the district, the municipal corporation shall establish separate accounts for the service payments designated for public infrastructure improvements and for the service payments authorized for the purpose of housing renovations. Money in an account of the municipal public improvement tax increment equivalent fund shall be used to finance the specific public infrastructure improvements designated in, or the housing renovations authorized by, the ordinance under section 5709.40 of the Revised Code with respect to which the account is established; in the case of an account established with respect to an ordinance adopted under division (C) of that section, money in the account shall be used to finance the public infrastructure improvements designated, or the housing renovations authorized, for each district created in the~~

ordinance. Money in an account shall not be used to finance or support housing renovations that take place after the district has expired. The municipal corporation also may deposit into ~~the municipal public improvement tax increment equivalent fund~~ any of those accounts municipal income tax revenue that has been ~~dedicated~~ designated by ordinance to finance the public infrastructure improvements ~~as designated in the ordinance and housing renovations.~~

(B) A municipal corporation may establish an urban redevelopment tax increment equivalent fund, by resolution or ordinance of its legislative authority, into which shall be deposited service payments in lieu of taxes distributed to the municipal corporation by the county treasurer as provided in section 5709.42 of the Revised Code for improvements exempt from taxation pursuant to an ordinance under section 5709.41 of the Revised Code. Moneys deposited in the urban redevelopment tax increment equivalent fund shall be used for such purposes as are authorized in the resolution or ordinance establishing the fund. The municipal corporation also may deposit into the urban redevelopment tax increment equivalent fund municipal income tax revenue that has been dedicated to fund any of the purposes for which the fund is established.

(C) A municipal corporation also may distribute money in the municipal public improvement tax increment equivalent fund or the urban redevelopment tax increment equivalent fund to any school district in which the exempt property is located in an amount not to exceed the amount of real property taxes that such school district would have received from the improvement if it were not exempt from taxation or use money in either or both funds to finance specific public improvements benefiting the school district. The resolution or ordinance establishing the fund shall set forth the percentage of such maximum amount that will be distributed to any affected school district or used to finance specific public improvements benefiting the school district.

(D) Any incidental surplus remaining in the municipal public improvement tax increment equivalent fund or an account of that fund, or in the urban redevelopment tax increment equivalent fund, ~~upon its dissolution of the account or fund~~ shall be transferred to the general fund of the municipal corporation.

Sec. 5709.73. (A) As used in this section and section 5709.74 of the Revised Code:

(1) "Business day" means a day of the week excluding Saturday, Sunday, and a legal holiday as defined in section 1.14 of the Revised Code.

(2) "Further improvements" or "improvements" means the increase in

the true value of ~~the~~ a parcel of real property ~~in the unincorporated territory of the township~~ that would first appear on the tax list and duplicate of real and public utility property after the effective date of a resolution adopted under ~~division (B)(1)~~ of this section were it not for the exemption granted by that resolution. ~~"Further improvements" does~~ For purposes of division (B) of this section, "improvements" do not include any property used or to be used for residential purposes.

(3) "Housing renovation" means a project carried out for residential purposes.

(4) "Incentive district" has the same meaning as in section 5709.40 of the Revised Code, except that a blighted area is in the unincorporated area of a township.

(5) "Project" and "public infrastructure improvement" have the same meanings as in section 5709.40 of the Revised Code.

~~(B)(4)~~ A board of township trustees may, by unanimous vote, adopt a resolution that declares to be a public purpose any public infrastructure improvements made that are necessary for the development of certain parcels of land located in the unincorporated area of the township. Except as otherwise provided in division ~~(B)(2) or (3)(D)~~ of this section, the resolution may exempt from real property taxation not more than seventy-five per cent of further improvements to a parcel of land which directly benefits from such public infrastructure improvements; the percentage exempted shall not, except as otherwise provided in division ~~(B)(2) or (3)(D)~~ of this section, exceed the estimated percentage of the incremental demand placed on the public infrastructure improvements that is directly attributable to the exempted improvement. A For the purposes of this division, a public infrastructure improvement directly benefits a tract or parcel of land only if further improvements made to the tract or parcel place a project on the parcel places direct, additional demand on the public infrastructure improvement, or, if the public infrastructure improvement has not yet been constructed, will place direct, additional demand on the public infrastructure improvement when completed. The resolution shall specify the percentage of the further improvements to be exempted.

(2)(C) A board of township trustees may adopt, by unanimous vote, a resolution creating an incentive district and declaring improvements to parcels within the district to be a public purpose and exempt from taxation as provided in this section. The district shall be located within the unincorporated area of the township and shall not include any territory that is included within a district created under division (B) of section 5709.78 of the Revised Code. The resolution shall delineate the boundary of the district

and specifically identify each parcel within the district. A district may not include any parcel that is or has been exempted from taxation under division (B) of this section or that is or has been within another district created under this division. A resolution may create more than one such district, and more than one resolution may be adopted under this division.

A resolution under this division shall specify the life of the district and the percentage of the improvements to be exempted and shall designate the public infrastructure improvements made or to be made that benefit or serve parcels in the district.

A resolution adopted under this division may authorize the use of service payments provided for in section 5709.74 of the Revised Code for the purpose of housing renovations within the district, provided that the resolution also designates public infrastructure improvements that benefit or serve the district, and that a project within the district places real property in use for commercial or industrial purposes. Service payments may be used to finance or support loans, deferred loans, and grants to persons for the purpose of housing renovations within the district. The resolution shall designate the parcels within the district that are eligible for housing renovations. The resolution shall state separately the amount or the percentages of the expected aggregate service payments that are designated for each public infrastructure improvement and for the purpose of housing renovations.

Except with the approval of the board of education of each city, local, or exempted village school district within the territory of which the district is or will be located, the life of a district shall not exceed ten years, and the percentage of improvements to be exempted shall not exceed seventy-five per cent. With such approval, the life of a district may be not more than thirty years, and the percentage of improvements to be exempted may be not more than one hundred per cent.

Approval of a board of education shall be obtained in the manner provided in division (D) of this section for exemptions under division (B) of this section, except that the notice to the board of education shall delineate the boundaries of the district, specifically identify each parcel within the district, identify each anticipated improvement in the district, provide an estimate of the true value in money of each such improvement, specify the life of the district and the percentage of improvements that would be exempted, and indicate the date on which the board of township trustees intends to adopt the resolution.

A board of township trustees shall not adopt a resolution under this division after June 30, 2007.

(D) Improvements with respect to a parcel may be exempted from taxation under division (B) of this section for up to ten years or, with the approval of the board of education of the city, local, or exempted village school district within ~~the territory of which the improvements are or will be~~ parcel is located, for up to thirty years. The percentage of the improvements exempted from taxation may, with such approval, exceed seventy-five per cent, but shall not exceed one hundred per cent. Not later than forty-five business days prior to adopting a resolution under this section declaring improvements to be a public purpose, the board of trustees shall deliver to the board of education a notice stating its intent to ~~declare improvements to be a public purpose under this section~~ adopt a resolution making that declaration. The notice shall ~~describe~~ identify the ~~parcel and the improvements~~ parcels for which improvements are to be exempted from taxation, provide an estimate of the true value in money of the improvements, specify the period for which the improvements would be exempted from taxation and the percentage of the improvements that would be exempted, and indicate the date on which the board of trustees intends to adopt the resolution. The board of education, by resolution adopted by a majority of the board, may approve the exemption for the period or for the exemption percentage specified in the notice, may disapprove the exemption for the number of years in excess of ten, may disapprove the exemption for the percentage of the improvements to be exempted in excess of seventy-five per cent, or both, or may approve the exemption on the condition that the board of trustees and the board of education negotiate an agreement providing for compensation to the school district equal in value to a percentage of the amount of taxes exempted in the eleventh and subsequent years of the exemption period or, in the case of exemption percentages in excess of seventy-five per cent, compensation equal in value to a percentage of the taxes that would be payable on the portion of the improvements in excess of seventy-five per cent were that portion to be subject to taxation. The board of education shall certify its resolution to the board of trustees not later than fourteen days prior to the date the board of trustees intends to adopt the resolution as indicated in the notice. If the board of education approves the exemption on the condition that a compensation agreement be negotiated, the board of education in its resolution shall propose a compensation percentage. If the board of education and the board of trustees negotiate a mutually acceptable compensation agreement, the resolution may declare the improvements a public purpose for the number of years specified in the resolution or, in the case of exemption percentages in excess of seventy-five per cent, for the

exemption percentage specified in the resolution. In either case, if the board of education and the board of trustees fail to negotiate a mutually acceptable compensation agreement, the resolution may declare the improvements a public purpose for not more than ten years, but shall not exempt more than seventy-five per cent of the improvements from taxation, or, in the case of a resolution adopted under division (B) of this section, not more than the estimated percentage of the incremental demand as otherwise permitted under prescribed by division (B)(4) of this section, whichever is if that percentage is less than seventy-five per cent. If the board of education fails to certify a resolution to the board of trustees within the time prescribed by this section, the board of trustees thereupon may adopt the resolution and may declare the improvements a public purpose for up to thirty years or, in the case of exemption percentages proposed in excess of seventy-five per cent, for the exemption percentage specified in the resolution. The board of township trustees may adopt the resolution at any time after the board of education certifies its resolution approving the exemption to the board of township trustees, or, if the board of education approves the exemption on the condition that a mutually acceptable compensation agreement be negotiated, at any time after the compensation agreement is agreed to by the board of education and the board of township trustees.

~~(3)~~ If a board of education has adopted a resolution waiving its right to approve exemptions from taxation and the resolution remains in effect, approval of such exemptions by the board of education is not required under this division (B)(2) of this section. If a board of education has adopted a resolution allowing a board of township trustees to deliver the notice required under this division (B)(2) of this section fewer than forty-five business days prior to adoption of the resolution by the board of township trustees, the board of township trustees shall deliver the notice to the board of education not later than the number of days prior to such adoption as prescribed by the board of education in its resolution. If a board of education adopts a resolution waiving its right to approve exemptions or shortening the notification period, the board of education shall certify a copy of the resolution to the board of township trustees. If the board of education rescinds such a resolution, it shall certify notice of the rescission to the board of township trustees.

~~(4)~~ If the board of trustees is not required by this division (B)(2) of this section to notify the board of education of the board of trustees' intent to declare improvements to be a public purpose, the board of trustees shall comply with the notice requirements imposed under section 5709.83 of the Revised Code before taking formal action to adopt the resolution making

that declaration, unless the board of education has adopted a resolution under that section waiving its right to receive such a notice.

~~(C) The~~ (E) An exemption from taxation granted under this section commences on with the tax year in which an improvement first appears on the tax list and duplicate of real and public utility property and that begins after the effective date of the resolution and. Except as otherwise provided in this division, the exemption ends on the date specified in the resolution as the date the improvement ceases to be a public purpose or the incentive district expires, or ends on the date on which such the public infrastructure improvements and housing renovations are paid in full from the township public improvement tax increment equivalent fund established under section 5709.75 of the Revised Code, whichever occurs first, unless. The exemption of an improvement with respect to a parcel may end on a later date, as specified in the resolution, if the board of township trustees and the board of education of the city, local, or exempted village school district within the territory of which the exempted improvement parcel is located have entered into a compensation agreement under section 5709.82 of the Revised Code with respect to the improvement or district and the board of education has approved the term of the exemption under division (B)(2)(D) of this section: If the board of township trustees and the board of education have entered into such an agreement, the exemption may end on a date, specified in the resolution, later than the date on which the improvements are paid in full from the township public improvement tax increment equivalent fund, but in no case shall the improvement be exempted from taxation for more than thirty years. The board of township trustees may, by majority vote, adopt a resolution which permits permitting the township to enter into such agreements as the board finds necessary or appropriate to provide for the construction or undertaking of public infrastructure improvements and housing renovations. Any exemption shall be claimed and allowed in the same or a similar manner as in the case of other real property exemptions. If an exemption status changes during a tax year, the procedure for the apportionment of the taxes for that year is the same as in the case of other changes in tax exemption status during the year.

(F) The board of township trustees may issue the notes of the township to finance all costs pertaining to the construction or undertaking of public infrastructure improvements and housing renovations made pursuant to this section. The notes shall be signed by the board and attested by the signature of the township clerk, shall bear interest not to exceed the rate provided in section 9.95 of the Revised Code, and are not subject to Chapter 133. of the Revised Code. The resolution authorizing the issuance of the notes shall

pledge the funds of the township public improvement tax increment equivalent fund established pursuant to section 5709.75 of the Revised Code to pay the interest on and principal of the notes. The notes, which may contain a clause permitting prepayment at the option of the board, shall be offered for sale on the open market or given to the vendor or contractor if no sale is made.

(G) The township, not later than fifteen days after the adoption of a resolution ~~granting a tax exemption~~ under this section, shall submit to the director of development a copy of the resolution. On or before the thirty-first day of March of each year, the township shall submit a status report to the director of development ~~outlining~~. The report shall indicate, in the manner prescribed by the director, the progress of the project during each year that the exemption remains in effect, including a summary of the receipts from service payments in lieu of taxes; expenditures of money from funds created under section 5709.75 of the Revised Code; a description of the public infrastructure improvements and housing renovations financed with such expenditures; and a quantitative summary of changes in employment and private investment resulting from each project.

(H) Nothing in this section shall be construed to prohibit a board of township trustees from declaring to be a public purpose improvements with respect to more than one parcel.

(I) A board of township trustees that adopted a resolution under this section prior to July 21, 1994, may amend that resolution to include any additional public infrastructure improvement. A board of township trustees that seeks by such an amendment to utilize money from its township public improvement tax increment equivalent fund for land acquisition in aid of industry, commerce, distribution, or research, demolition on private property, or stormwater and flood remediation projects may do so provided that the board currently is a party to a hold-harmless agreement with the board of education of the city, local, or exempted village school district within the territory of which are located the parcels that are subject to an exemption. For the purposes of this division, a "hold-harmless agreement" means an agreement under which the board of township trustees agrees to compensate the school district for one hundred per cent of the tax revenue that the school district would have received from further improvements to parcels designated in the resolution were it not for the exemption granted by the resolution.

Sec. 5709.74. A township that has declared an improvement to be a public purpose under section 5709.73 of the Revised Code may require the owner of the parcel to make annual service payments in lieu of taxes to the

county treasurer on or before the final dates for payment of real property taxes. Each payment shall be charged and collected in the same manner and in the same amount as the real property taxes that would have been charged and payable against any improvement made on the parcel if it were not exempt from taxation. If any reduction in the levies otherwise applicable to the exempt property is made by the county budget commission under section 5705.31 of the Revised Code, the amount of the service payment in lieu of taxes shall be calculated as if a reduction in levies had not been made. A township shall not require an owner to make annual service payments in lieu of taxes pursuant to this section after the date on which the township has been paid back in full for the public infrastructure improvements made pursuant to sections 5709.73 to 5709.75 of the Revised Code.

Moneys collected as service payments in lieu of taxes shall be distributed at the same time and in the same manner as real property tax payments except that the entire amount so collected shall be distributed to the township in which the improvement is located. If a parcel upon which moneys are collected as service payments in lieu of taxes is annexed to a municipal corporation, the service payments shall continue to be collected and distributed to the township in which the parcel was located before its annexation until the township is paid back in full for the cost of ~~the~~ any public infrastructure improvements it made on the parcel. The treasurer shall maintain a record of the service payments in lieu of taxes made from property in each township.

Nothing in this section or section 5709.73 of the Revised Code affects the taxes levied against that portion of the value of any parcel of property that is not exempt from taxation.

Sec. 5709.75. Any township that receives service payments in lieu of taxes under section 5709.74 of the Revised Code shall establish a township public improvement tax increment equivalent fund, ~~by resolution of the board of township trustees,~~ into which those payments shall be deposited ~~such payments distributed to the township by the county treasurer as provided in that section.~~ If the board of township trustees has adopted a resolution under division (C) of section 5709.73 of the Revised Code, the township shall establish at least one account in that fund with respect to resolutions adopted under division (B) of that section, and one account with respect to each district created by a resolution adopted under division (C) of that section. If a resolution adopted under division (C) of section 5709.73 of the Revised Code also authorizes the use of service payments for housing renovations within the district, the township shall establish separate accounts for the service payments designated for public infrastructure

improvements and for the service payments authorized for the purpose of housing renovations. Moneys deposited in an account of that fund shall be used by the township to pay the costs of public infrastructure improvements made pursuant to section 5709.73 of the Revised Code designated in or the housing renovations authorized by the resolution with respect to which the account is established, including any interest on and principal of the notes; in the case of an account established with respect to a resolution adopted under division (C) of that section, money in the account shall be used to finance the public infrastructure improvements designated, or the housing renovations authorized, for each district created in the resolution. Money in an account shall not be used to finance or support housing renovations that take place after the district has expired. The township may also distribute money in the fund such an account to any school district in which the exempt property is located in an amount not to exceed the amount of real property taxes that such school district would have received from the improvement if it were not exempt from taxation. The resolution establishing the fund shall set forth the percentage of such maximum amount that will be distributed to any affected school district. Any incidental surplus remaining in the township public improvement tax increment equivalent fund or an account of that fund upon its dissolution of the account or fund shall be transferred to the general fund of the township.

Sec. 5709.77. As used in sections 5709.77 to 5709.81 of the Revised Code:

(A) "Business day" means a day of the week excluding Saturday, Sunday, and a legal holiday as defined in section 1.14 of the Revised Code.

(A)(B) "Fund" means to provide for the payment of the debt service on and the expenses relating to an outstanding obligation of the county.

(C) "Housing renovation" means a project carried out for residential purposes.

(B)(D) "Improvement" means the increase in the true value of any a parcel of real property subsequent to that would first appear on the tax list and duplicate of real and public utility property after the effective date of a resolution adopted under section 5709.78 of the Revised Code were it not for the exemption granted by that resolution. "Improvement" does not include any property used or to be used for residential purposes, or a public infrastructure improvement. For purposes of division (A) of section 5709.78 of the Revised Code, "improvement" does not include any property used or to be used for residential purposes.

(E) "Incentive district" has the same meaning as in section 5709.40 of the Revised Code, except that a blighted area is in the unincorporated

territory of a county.

~~(G)~~(F) "Refund" means to fund and retire an outstanding obligation of the county.

~~(D) "Tract" means a parcel of real property some percentage of the increase in value of which after the effective date of a resolution adopted under section 5709.78 of the Revised Code is exempted from real property taxation under that resolution.~~

~~(E) "Business day" means a day of the week excluding Saturday, Sunday, and a legal holiday as defined in section 1.14 of the Revised Code.~~

(G) "Project" and "public infrastructure improvement" have the same meanings as in section 5709.40 of the Revised Code.

Sec. 5709.78. (A)~~(1)~~ A board of county commissioners may, by resolution, declare improvements to ~~a parcel~~ certain parcels of real property located in the unincorporated territory of the county to be a public purpose. Except as otherwise provided in division ~~(A)(2) or (3)~~(C) of this section, not more than seventy-five per cent of an improvement thus declared to be a public purpose may be exempted from real property taxation; the percentage exempted shall not, except as otherwise provided in those divisions, exceed the estimated percentage of the incremental demand placed on the public infrastructure improvements that is directly attributable to the exempted improvement. The resolution shall specify the percentage of the improvement to be exempted.

~~(2)~~ A resolution adopted under this division shall designate the specific public infrastructure improvements made, to be made, or in the process of being made by the county that directly benefit, or that once made will directly benefit, the parcels for which improvements are declared to be a public purpose. For the purposes of this division, a public infrastructure improvement directly benefits such a parcel only if a project on the parcel places direct, additional demand on the public infrastructure improvement or, if the public infrastructure improvement has not yet been completed, will place direct, additional demand on the public infrastructure improvement once it is completed. The service payments provided for in section 5709.79 of the Revised Code shall be used to finance the public infrastructure improvements designated in the resolution.

(B) A board of county commissioners may adopt a resolution creating an incentive district and declaring improvements to parcels within the district to be a public purpose and exempt from taxation as provided in this section. The district shall be located within the unincorporated territory of the county and shall not include any territory that is included within a district created under division (C) of section 5709.73 of the Revised Code.

The resolution shall delineate the boundary of the district and specifically identify each parcel within the district. A district may not include any parcel that is or has been exempted from taxation under division (A) of this section or that is or has been within another district created under this division. A resolution may create more than one such district, and more than one resolution may be adopted under this division.

A resolution under this division shall specify the life of the district and the percentage of the improvements to be exempted and shall designate the public infrastructure improvements made or to be made that benefit or serve parcels in the district.

A resolution adopted under this division may authorize the use of service payments provided for in section 5709.79 of the Revised Code for the purpose of housing renovations within the district, provided that the resolution also designates public infrastructure improvements that benefit or serve the district, and that a project within the district places real property in use for commercial or industrial purposes. Service payments may be used to finance or support loans, deferred loans, and grants to persons for the purpose of housing renovations within the district. The resolution shall designate the parcels within the district that are eligible for housing renovations. The resolution shall state separately the amount or the percentages of the expected aggregate service payments that are designated for each public infrastructure improvement and for the purpose of housing renovations.

Except with the approval of the board of education of each city, local, or exempted village school district within the territory of which the district is or will be located, the life of a district shall not exceed ten years, and the percentage of improvements to be exempted shall not exceed seventy-five per cent. With such approval, the life of a district may be not more than thirty years, and the percentage of improvements to be exempted may be not more than one hundred per cent.

Approval of a board of education shall be obtained in the manner provided in division (C) of this section for exemptions under division (A) of this section, except that the notice to the board of education shall delineate the boundaries of the district, specifically identify each parcel within the district, identify each anticipated improvement in the district, provide an estimate of the true value in money of each such improvement, specify the life of the district and the percentage of improvements that would be exempted, and indicate the date on which the board of county commissioners intends to adopt the resolution.

A board of county commissioners shall not adopt a resolution under this

division after June 30, 2007.

(C)(1) Improvements with respect to a parcel may be exempted from taxation under division (A) of this section for up to ten years or, with the approval of the board of education of the city, local, or exempted village school district within ~~the territory of which the improvements are or will be~~ parcel is located, for up to thirty years. The percentage of the improvements exempted from taxation may, with such approval, exceed seventy-five per cent, but shall not exceed one hundred per cent. Not later than forty-five business days prior to adopting a resolution under this section declaring improvements to be a public purpose, the board of county commissioners shall deliver to the board of education a notice stating its intent to ~~declare improvements to be a public purpose under this section~~ adopt a resolution making that declaration. The notice shall ~~describe~~ identify the ~~parcel and the improvements~~ parcels for which improvements are to be exempted from taxation, provide an estimate of the true value in money of the improvements, specify the period for which the improvements would be exempted from taxation and the percentage of the improvements that would be exempted, and indicate the date on which the board of county commissioners intends to adopt the resolution. The board of education, by resolution adopted by a majority of the board, may approve the exemption for the period or for the exemption percentage specified in the notice, may disapprove the exemption for the number of years in excess of ten, may disapprove the exemption for the percentage of the improvements to be exempted in excess of seventy-five per cent, or both, or may approve the exemption on the condition that the board of county commissioners and the board of education negotiate an agreement providing for compensation to the school district equal in value to a percentage of the amount of taxes exempted in the eleventh and subsequent years of the exemption period or, in the case of exemption percentages in excess of seventy-five per cent, compensation equal in value to a percentage of the taxes that would be payable on the portion of the improvements in excess of seventy-five per cent were that portion to be subject to taxation. The board of education shall certify its resolution to the board of county commissioners not later than fourteen days prior to the date the board of county commissioners intends to adopt its resolution as indicated in the notice. If the board of education approves the exemption on the condition that a compensation agreement be negotiated, the board of education in its resolution shall propose a compensation percentage. If the board of education and the board of county commissioners negotiate a mutually acceptable compensation agreement, the resolution of the board of county commissioners may declare the

improvements a public purpose for the number of years specified in that resolution or, in the case of exemption percentages in excess of seventy-five per cent, for the exemption percentage specified in the resolution. In either case, if the board of education and the board of county commissioners fail to negotiate a mutually acceptable compensation agreement, the resolution may declare the improvements a public purpose for not more than ten years, but shall not exempt more than seventy-five per cent of the improvements from taxation, or, in the case of a resolution adopted under division (A) of this section, not more than the estimated percentage of the incremental demand as otherwise permitted under prescribed by division (A)(1) of this section, whichever if that percentage is less than seventy-five per cent. If the board of education fails to certify a resolution to the board of county commissioners within the time prescribed by this section, the board of county commissioners thereupon may adopt the resolution and may declare the improvements a public purpose for up to thirty years or, in the case of exemption percentages proposed in excess of seventy-five per cent, for the exemption percentage specified in the resolution. The board of county commissioners may adopt the resolution at any time after the board of education certifies its resolution approving the exemption to the board of county commissioners, or, if the board of education approves the exemption on the condition that a mutually acceptable compensation agreement be negotiated, at any time after the compensation agreement is agreed to by the board of education and the board of county commissioners.

~~(3)~~(2) If a board of education has adopted a resolution waiving its right to approve exemptions from taxation and the resolution remains in effect, approval of such exemptions by the board of education is not required under division ~~(A)(2)(C)(1)~~ of this section. If a board of education has adopted a resolution allowing a board of county commissioners to deliver the notice required under division ~~(B)(2)(C)(1)~~ of this section fewer than forty-five business days prior to approval of the resolution by the board of county commissioners, the board of county commissioners shall deliver the notice to the board of education not later than the number of days prior to such approval as prescribed by the board of education in its resolution. If a board of education adopts a resolution waiving its right to approve exemptions or shortening the notification period, the board of education shall certify a copy of the resolution to the board of county commissioners. If the board of education rescinds such a resolution, it shall certify notice of the rescission to the board of county commissioners.

~~(B)~~ The ~~(D)~~ An exemption from taxation granted under this section commences on with the tax year in which an improvement first appears on

the tax list and duplicate of real and public utility property and that begins after the effective date of the resolution and, Except as otherwise provided in this division, the exemption ends on the date specified in the resolution as the date the improvement ceases to be a public purpose or the incentive district expires, or ends on the date on which the county can no longer require annual service payments in lieu of taxes under section 5709.79 of the Revised Code, whichever occurs first, unless. The exemption of an improvement with respect to a parcel may end on a later date, as specified in the resolution, if the board of commissioners and the board of education of the city, local, or exempted village school district within the territory of which the exempted improvement parcel is located have entered into a compensation agreement under section 5709.82 of the Revised Code with respect to the improvement or district and the board of education has approved the term of the exemption under division (A)(2)(C)(1) of this section. If the board of commissioners and the board of education have entered into such an agreement, the exemption may end on a date, specified in the resolution, later than the date on which the county can no longer require annual service payments in lieu of taxes, but in no case shall the improvements improvement be exempted from taxation for more than thirty years. The exemption Exemptions shall be claimed and allowed in the same or a similar manner as in the case of other real property exemptions. If an exemption status changes during a tax year, the procedure for the apportionment of the taxes for that year is the same as in the case of other changes in tax exemption status during the year.

~~(C) A resolution adopted under this section shall designate specific public infrastructure improvements made, to be made, or in the process of being made by the county that directly benefit, or that once made will directly benefit, the tract. A public improvement directly benefits a tract or parcel of land only if improvements made to the tract or parcel place direct, additional demand on the public improvement, or, if the public improvement has not yet been constructed, will place direct, additional demand on the public improvement when completed. The service payments provided for in section 5709.79 of the Revised Code shall be used to finance the public infrastructure improvements designated in the resolution. Additional county financing of the public infrastructure improvements may be provided by any methods that counties are otherwise permitted to use for financing such improvements.~~

~~(D)(E)~~ If the board of county commissioners is not required by ~~division (A)(2)~~ of this section to notify the board of education of the board of county commissioners' intent to declare improvements to be a public purpose, the

board of county commissioners shall comply with the notice requirements imposed under section 5709.83 of the Revised Code before taking formal action to adopt the resolution making that declaration, unless the board of education has adopted a resolution under that section waiving its right to receive such a notice.

~~(E)~~(F) The county, not later than fifteen days after the adoption of a resolution ~~granting a tax exemption~~ under this section, shall submit to the director of development a copy of the resolution. On or before the thirty-first day of March of each year, the county shall submit a status report to the director of development ~~outlining~~. The report shall indicate, in the manner prescribed by the director, the progress of the project during each year that the an exemption remains in effect, including a summary of the receipts from service payments in lieu of taxes; expenditures of money from funds created under section 5709.75 of the Revised Code; a description of the public infrastructure improvements and housing renovations financed with such expenditures; and a quantitative summary of changes in employment and private investment resulting from each project.

(G) Nothing in this section shall be construed to prohibit a board of county commissioners from declaring to be a public purpose improvements with respect to more than one parcel.

Sec. 5709.79. A board of county commissioners that adopts a resolution under section 5709.78 of the Revised Code shall in the resolution require that the owner of the improvement make annual service payments in lieu of taxes to the county treasurer on or before the final dates for payment of real property taxes. Each such payment shall be charged and collected in the same manner and in the same amount as the real property taxes that would have been charged and payable against the improvement if its value were not exempt from taxation. If any reduction in the levies otherwise applicable to the improvement is made by the county budget commission under section 5705.31 of the Revised Code, the amount of the service payment in lieu of taxes shall be calculated as if the reduction in levies had not been made.

The county shall not require the owner to make annual service payments in lieu of taxes pursuant to this section after the date on which one of the following occurs:

(A) If bonds or notes were not issued under section 307.082 or 5709.81 of the Revised Code for any public infrastructure improvements benefiting the ~~tract~~ parcel on which the improvement is located, or for any housing renovations within an incentive district, and if service payments were not pledged pursuant to division (B) of section 5709.81 of the Revised Code, the date the county has collected sufficient money in the applicable account of

the redevelopment tax equivalent fund to pay the cost of constructing or repairing the public infrastructure improvements designated in, or the housing renovations authorized by, the resolution adopted under section 5709.78 of the Revised Code;

(B) If service payments were pledged under division (B) of section 5709.81 of the Revised Code to secure payment of any obligation issued to finance the public infrastructure improvement and housing renovations, the date the purposes for which the payments were pledged are paid in full;

(C) If bonds or notes were issued under section 307.082 or 5709.81 of the Revised Code, the date the interest on and principal of such bonds and notes have been paid in full.

Money collected as service payments in lieu of taxes shall be distributed at the same time and in the same manner as real property tax payments except that the entire amount so collected shall be distributed to the county in which the ~~tract~~ parcel is located. The county treasurer shall maintain a record of the service payments in lieu of taxes made for each ~~tract~~ parcel. If a ~~tract~~ parcel upon which moneys are collected as service payments in lieu of taxes is annexed to a municipal corporation, the service payments shall continue to be collected and distributed to the county until the date described in division (A), (B), or (C) of this section.

Nothing in this section or section 5709.78 of the Revised Code affects the taxes levied against that portion of the value of any ~~tract~~ parcel that is not exempt from taxation.

Sec. 5709.80. The board of county commissioners of a county that receives service payments in lieu of taxes under section 5709.79 of the Revised Code shall, ~~by resolution~~, establish a redevelopment tax equivalent fund into which those payments shall be deposited ~~service payments distributed to the county by the county treasurer as provided in that section~~. Separate accounts shall be established in the fund for each resolution adopted by the board of county commissioners under section 5709.78 of the Revised Code. If the board of county commissioners has adopted a resolution under division (B) of that section, the county shall establish an account for each district created in that resolution. If a resolution adopted under division (B) of section 5709.78 of the Revised Code also authorizes the use of service payments for housing renovations within the district, the county shall establish separate accounts for the service payments designated for public infrastructure improvements and for the service payments authorized for the purpose of housing renovations. Moneys deposited into each account of the fund shall be used by the county to pay the cost of constructing or repairing the public infrastructure improvements designated

in, or the housing renovations authorized by, the resolution or district for which the account is established, to pay the interest on and principal of bonds or notes issued under division (B) of section 307.082 or division (A) of section 5709.81 of the Revised Code, or for the purposes pledged under division (B) of section 5709.81 of the Revised Code. Money in an account shall not be used to finance or support housing renovations that take place after the district has expired. The board of county commissioners may also distribute money in an account to any school district in which the exempt property is located in an amount not to exceed the amount of real property taxes that such school district would have received from the improvement if it were not exempt from taxation. The resolution under which an account is established shall set forth the percentage of such maximum amount that will be distributed to any affected school district. An account dissolves upon fulfillment of the purposes for which money in the account ~~can~~ may be used. An incidental surplus remaining in an account upon its dissolution shall be transferred to the general fund of the county.

Sec. 5709.81. (A) Upon determination by the board of county commissioners that such an issuance will be in the county's best interest, the board may, in the resolution adopted under section 5709.78 of the Revised Code, authorize the issuance of revenue bonds or notes to refund any general obligation bonds or notes, any mortgage revenue bonds or notes, or any revenue bonds issued prior to the effective date of the resolution to finance any public infrastructure improvement designated in, or the housing renovations authorized by, the resolution as directly benefiting the tract of land that is the subject of the resolution. ~~A public infrastructure improvement directly benefits a tract of land only if improvements made to the tract place direct, additional demand on the public infrastructure improvement, or, if the public infrastructure improvement has not yet been constructed, will place direct, additional demand on the public infrastructure improvement when completed.~~

The resolution shall pledge only the funds of the account of the county redevelopment tax equivalent fund established for such public infrastructure improvements and housing renovations, to pay the interest on and principal of the bonds or notes issued pursuant to the resolution. The resolution shall specify the maturity date or dates, the interest payable in accordance with section 9.95 of the Revised Code, and such other terms to be included in the bonds or notes as are necessary for their issuance. The bonds and notes are not subject to Chapter 133. of the Revised Code.

Any bond or note issued under this division shall be deemed to be issued for the same purpose as the bond or note that it is being issued to

refund. The proceeds of any bond or note issued under this division shall be used as determined by the board of county commissioners to pay the principal amount of the bond or note being refunded, any redemption premium, and any interest to redemption or maturity, and any expenses related to the outstanding obligations considered necessary by the board of county commissioners for the issuance of the bond or note.

Any bond or note issued to refund any other bond or note under this division may be issued whether or not such refunded bond or note was issued subject to call or redemption prior to maturity.

The authority granted by this division is in addition to and an alternative for, but not a limitation upon, other authorizations granted by or pursuant to law or the constitution for the same or similar purposes.

(B) In lieu of issuing bonds or notes under division (A) of this section, the board of county commissioners may, in a resolution adopted under section 5709.78 of the Revised Code, pledge the service payments collected under section 5709.79 of the Revised Code to secure payment of any obligation of the county issued to finance any public infrastructure improvements designated in the resolution ~~as directly benefiting the tract of land for which the service payments are paid.~~

Sec. 5725.14. (A) As used in this section and section 5725.15 of the Revised Code:

(1) "Billing address" of a customer means one of the following:

(a) The customer's address as set forth in any notice, statement, bill, or similar acknowledgment shall be presumed to be the address where the customer is located with respect to the transaction for which the dealer issued the notice, statement, bill, or acknowledgment.

(b) If the dealer issues any notice, statement, bill, or similar acknowledgment electronically to an address other than a street address or post office box address or if the dealer does not issue such a notice, statement, bill, or acknowledgment, the customer's street address as set forth in the records of the dealer at the time of the transaction shall be presumed to be the address where the customer is located.

(2) "Commissions" includes but is not limited to brokerage commissions, asset management fees, and similar fees charged in the regular course of business to a customer for the maintenance and management of the customer's account.

(3) "Gross receipts" means one of the following:

(a) In the case of a dealer in intangibles principally engaged in the business of lending money or discounting loans, the aggregate amount of loans effected or discounted;

(b) In the case of a dealer in intangibles principally engaged in the business of selling or buying stocks, bonds, or other similar securities either on the dealer's own account or as agent for another, the aggregate amount of all commissions charged.

(B) Each dealer in intangibles shall return to the tax commissioner between the first and second Mondays of March, annually, a report exhibiting in detail, and under appropriate heads, ~~his~~ the dealer's resources and liabilities at the close of business on the thirty-first day of December next preceding. In the case of an unincorporated dealer in intangibles, such report shall also exhibit the amount or value as of the date of conversion of all property within the year preceding the date of listing, and on or after the first day of November converted into bonds or other securities not taxed to the extent such nontaxable bonds or securities may be shown in ~~his~~ the dealer's resources on such date, without deduction for indebtedness created in the purchase of such nontaxable bonds or securities.

If a dealer in intangibles maintains separate business offices, whether within this state only or within and without this state, ~~said~~ the report shall also show the gross receipts from business done at each such office during the year ending on the thirty-first day of December next preceding.

~~"Gross receipts" as used in this section and section 5725.15 of the Revised Code, means, in the case of a dealer in intangibles principally engaged in the business of lending money or discounting loans, the aggregate amount of loans effected or discounted; in the case of a dealer in intangibles principally engaged in the business of selling or buying stocks, bonds, and other similar securities either on his own account or as agent for another, gross receipts means the aggregate amount of all commissions charged plus one per cent of the aggregate amount of all other receipts.~~

~~As used in~~ For the purposes of this section and section 5725.15 of the Revised Code, business is considered done at an office when it originates at such office, but the receipts from business originating at one office and consummated at another office shall be divided equitably between such offices.

(C) For the purposes of this section and section 5725.15 of the Revised Code, in the case of a dealer in intangibles principally engaged in the business of selling or buying stocks, bonds, or other similar securities either on the dealer's own account or as agent for another, the dealer's capital, surplus, and undivided profits employed in this state shall bear the same ratio to the dealer's total capital, surplus, and undivided profits employed everywhere as the amount described in division (C)(1) of this section bears to the amount described in division (C)(2) of this section:

(1) The sum of the commissions earned during the year covered by the report from transactions with respect to brokerage accounts owned by customers having billing addresses in this state;

(2) The sum of the commissions earned during that year from transactions with respect to brokerage accounts owned by all of the dealer's customers.

(D) An incorporated dealer in intangibles which owns or controls fifty-one per cent or more of the common stock of another incorporated dealer in intangibles may, under uniform regulations prescribed by the tax commissioner, make a consolidated return for the purpose of sections 5725.01 to 5725.26, inclusive, of the Revised Code. In such case the parent corporation making such return is not required to include in its resources any of the stocks, securities, or other obligations of its subsidiary dealers, nor permitted to include in its liabilities any of its own securities or other obligations belonging to its subsidiaries.

Sec. 5725.24. (A) As used in this section, "qualifying dealer" means a dealer in intangibles that is a qualifying dealer in intangibles as defined in section 5733.45 of the Revised Code or a member of a qualifying controlled group, as defined in section 5733.04 of the Revised Code, of which an insurance company also is a member on the first day of January of the year in and for which the tax imposed by section 5707.03 of the Revised Code is required to be paid by the dealer.

(B) The taxes levied by ~~sections 5707.03 and~~ section 5725.18 of the Revised Code and collected pursuant to this chapter shall be paid into the state treasury to the credit of the general revenue fund. ~~The~~

(C) ~~The~~ taxes levied by section 5707.03 of the Revised Code ~~on deposits and~~ on the value of shares in and capital employed by dealers in intangibles other than those that are qualifying dealers shall be for the use of the general revenue fund of the state and the local government funds of the several counties in which the taxes originate as provided in ~~divisions (A) and (B) of this section~~ division.

On or before the first day of each month on which there is money in the state treasury for disbursement under this ~~section~~ division, the tax commissioner shall provide for payment to the county treasurer of each county of five-eighths of the amount of the taxes collected ~~under this chapter as follows:~~

~~(A) All of the money received and credited on account of taxes assessed on deposits of offices of financial institutions located in the county, as so shown;~~

~~(B) Five-eighths of the money received and credited on account of~~

shares in and capital employed by dealers in intangibles other than those that are qualifying dealers, representing capital employed in the county, ~~as so shown.~~

~~The.~~ The balance of the money received and credited on account of taxes assessed on shares in and capital employed by such dealers in intangibles shall be credited to the general revenue fund.

For the purpose of this ~~section~~ division, such taxes are deemed to originate in the counties in which ~~such financial institutions and~~ such dealers in intangibles have their offices.

Money received into the treasury of a county pursuant to this section shall be credited to the undivided local government fund of the county and shall be distributed by the budget commission as provided by law.

(D) All of the taxes levied under section 5707.03 of the Revised Code on the value of the shares in and capital employed by dealers in intangibles that are qualifying dealers shall be paid into the state treasury to the credit of the general revenue fund.

Sec. 5725.25. (A) The real estate of a domestic insurance company shall be taxed in the place where it is located, the same as the real estate of other persons is taxed, but the tax provided for by sections 5725.01 to 5725.26 of the Revised Code, shall be in lieu of all other taxes on the other property and assets of such domestic insurance company, except as provided in division (B) of this section, and of all other taxes, charges, and excises on such domestic insurance companies, and all other taxes on the stockholders, members, or policyholders of such company by reason of their stock or other interest in such insurance company, except as to annuities or the right to receive the proceeds of a policy payable after its maturity in installments, or left with the company at interest. Sections 5725.01 to 5725.26 of the Revised Code do not assess any tax on any foreign insurance company or affect any tax on a foreign insurance company under any laws of this state.

(B) Tangible personal property taxable under Chapter 5711. of the Revised Code shall be subject to taxation if it is owned by a domestic insurance company and leased or held for the purpose of leasing to a person other than an insurance company for use in business.

(C) For reports required to be filed under section 5725.14 of the Revised Code in 2003 and thereafter, nothing in this section shall be construed to exempt the property of any dealer in intangibles under section 5725.13 of the Revised Code from the tax imposed under section 5707.03 of the Revised Code.

Sec. 5725.26. The real estate of a financial institution or dealer in intangibles shall be taxed in the place where it is located, the same as the

real estate of persons is taxed, but the taxes provided for in Chapters 5725. and 5733. of the Revised Code, shall be in lieu of all other taxes on the other property and assets of such institution or dealer, except personal property taxable under Chapter 5711. of the Revised Code and leased, or held for the purpose of leasing, to others if the owner or lessor of the property acquired it for the sole purpose of leasing it to others.

For reports required to be filed under section 5725.14 of the Revised Code in 2003 and thereafter, nothing in this section shall be construed to exempt the property of any dealer in intangibles under section 5725.13 of the Revised Code from the tax imposed under section 5707.03 of the Revised Code.

Sec. 5733.056. (A) As used in this section:

(1) "Billing address" means the address where any notice, statement, or bill relating to a customer's account is mailed, as indicated in the books and records of the taxpayer on the first day of the taxable year or on such later date in the taxable year when the customer relationship began.

(2) "Borrower or credit card holder located in this state" means:

(a) A borrower, other than a credit card holder, that is engaged in a trade or business and maintains its commercial domicile in this state; or

(b) A borrower that is not engaged in a trade or business, or a credit card holder, whose billing address is in this state.

(3) "Branch" means a "domestic branch" as defined in section 3 of the "Federal Deposit Insurance Act," 64 Stat. 873, 12 U.S.C. 1813(o), as amended.

(4) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services that are included in such employee's gross income under the Internal Revenue Code. In the case of employees not subject to the Internal Revenue Code, such as those employed in foreign countries, the determination of whether such payments would constitute gross income to such employees under the Internal Revenue Code shall be made as though such employees were subject to the Internal Revenue Code.

(5) "Credit card" means a credit, travel, or entertainment card.

(6) "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

(7) "Deposits" has the meaning given in section 3 of the "Federal Deposit Insurance Act," 64 Stat. 873, 12 U.S.C. 1813(1), as amended.

(8) "Employee" means, with respect to a particular taxpayer, any

individual who under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(9) "Gross rents" means the actual sum of money or other consideration payable for the use or possession of property. "Gross rents" includes:

(a) Any amount payable for the use or possession of real property or tangible personal property whether designated as a fixed sum of money or as a percentage of receipts, profits, or otherwise;

(b) Any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs, or any other amount required to be paid by the terms of a lease or other arrangement; and

(c) A proportionate part of the cost of any improvement to real property made by or on behalf of the taxpayer which reverts to the owner or lessor upon termination of a lease or other arrangement. The amount to be included in gross rents is the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year. However, where a building is erected on leased land, by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight, and the value of the building is determined in the same manner as if owned by the taxpayer.

(d) The following are not included in the term "gross rents":

(i) Reasonable amounts payable as separate charges for water and electric service furnished by the lessor;

(ii) Reasonable amounts payable as service charges for janitorial services furnished by the lessor;

(iii) Reasonable amounts payable for storage, provided such amounts are payable for space not designated and not under the control of the taxpayer; and

(iv) That portion of any rental payment which is applicable to the space subleased from the taxpayer and not used by it.

(10) "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and its customer, or the purchase, in whole or in part, of such extension of credit from another. Loans include debt obligations of subsidiaries, participations, syndications, and leases treated as loans for federal income tax purposes. "Loan" does not include: properties treated as loans under section 595 of the Internal Revenue Code; futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; non-interest bearing balances due from depositor institutions; cash items in the process of collection; federal funds sold; securities purchased under

agreements to resell; assets held in a trading account; securities; interests in a real estate mortgage investment conduit or other mortgage-backed or asset-backed security; and other similar items.

(11) "Loan secured by real property" means that fifty per cent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

(12) "Merchant discount" means the fee, or negotiated discount, charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

(13) "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(14) "Principal base of operations" with respect to transportation property means the place of more or less permanent nature from which the property is regularly directed or controlled. With respect to an employee, the "principal base of operations" means the place of more or less permanent nature from which the employee regularly (a) starts work and to which the employee customarily returns in order to receive instructions from the employer or (b) communicates with the employee's customers or other persons or (c) performs any other functions necessary to the exercise of the trade or profession at some other point or points.

(15) "Qualified institution" means a financial institution that on or after June 1, 1997:

(a)(i) Has consummated one or more approved transactions with insured banks with different home states that would qualify under section 102 of the "Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994," Public Law 103-328, 108 Stat. 2338;

(ii) Is a federal savings association or federal savings bank that has consummated one or more interstate acquisitions that result in a financial institution that has branches in more than one state; or

(iii) Has consummated one or more approved interstate acquisitions under authority of Title XI of the Revised Code that result in a financial institution that has branches in more than one state; and

(b) Has at least ~~ten~~ nine per cent of its deposits in this state as of the last day of June prior to the beginning of the tax year.

(16) "Real property owned" and "tangible personal property owned"

mean real and tangible personal property, respectively, on which the taxpayer may claim depreciation for federal income tax purposes, or to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes, or could claim depreciation if subject to federal income tax. Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(17) "Regular place of business" means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied, and used by employees of the taxpayer.

(18) "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any territory or possession of the United States.

(19) "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(20) "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels and motor vehicles, as well as any equipment or containers attached to such property, such as rolling stock, barges, trailers, or the like.

(B) The annual financial institution report determines the value of the issued and outstanding shares of stock of the taxpayer, and is the base or measure of the franchise tax liability. Such determination shall be made as of the date shown by the report to have been the beginning of the financial institution's annual accounting period that includes the first day of January of the tax year. For purposes of this section, division (A) of section 5733.05, and division (D) of section 5733.06 of the Revised Code, the value of the issued and outstanding shares of stock of the financial institution shall include the total value, as shown by the books of the financial institution, of its capital, surplus, whether earned or unearned, undivided profits, and reserves, but exclusive of:

(1) Reserves for accounts receivable, depreciation, depletion, and any other valuation reserves with respect to specific assets;

(2) Taxes due and payable during the year for which such report was made;

(3) Voting stock and participation certificates in corporations chartered pursuant to the "Farm Credit Act of 1971," 85 Stat. 597, 12 U.S.C. 2091, as amended;

(4) Good will, appreciation, and abandoned property as set up in the annual report of the financial institution, provided a certified balance sheet

of the company is made available upon the request of the tax commissioner. Such balance sheet shall not be a part of the public records, but shall be a confidential report for use of the tax commissioner only.

(5) A portion of the value of the issued and outstanding shares of stock of such financial institution equal to the amount obtained by multiplying such value by the quotient obtained by:

(a) Dividing (1) the amount of the financial institution's assets, as shown on its books, represented by investments in the capital stock and indebtedness of public utilities of which at least eighty per cent of the utility's issued and outstanding common stock is owned by the financial institution by (2) the total assets of such financial institution as shown on its books;

(b) Dividing (1) the amount of the financial institution's assets, as shown on its books, represented by investments in the capital stock and indebtedness of insurance companies of which at least eighty per cent of the insurance company's issued and outstanding common stock is owned by the financial institution by (2) the total assets of such financial institution as shown on its books;

(c) Dividing (1) the amount of the financial institution's assets, as shown on its books, represented by investments in the capital stock and indebtedness of other financial institutions of which at least twenty-five per cent of the other financial institution's issued and outstanding common stock is owned by the financial institution by (2) the total assets of the financial institution as shown on its books. Division (B)(5)(c) of this section applies only with respect to such other financial institutions that for the tax year immediately following the taxpayer's taxable year will pay the tax imposed by division (D) of section 5733.06 of the Revised Code.

(6) Land that has been determined pursuant to section 5713.31 of the Revised Code by the county auditor of the county in which the land is located to be devoted exclusively to agricultural use as of the first Monday of June in the financial institution's taxable year.

(7) Property within this state used exclusively during the taxable year for qualified research as defined in section 5733.05 of the Revised Code.

(C) The base upon which the tax levied under division (D) of section 5733.06 of the Revised Code shall be computed by multiplying the value of a financial institution's issued and outstanding shares of stock as determined in division (B) of this section by a fraction. The numerator of the fraction is the sum of the following: the property factor multiplied by fifteen, the payroll factor multiplied by fifteen, and the sales factor multiplied by seventy. The denominator of the fraction is one hundred, provided that the

denominator shall be reduced by fifteen if the property factor has a denominator of zero, by fifteen if the payroll factor has a denominator of zero, and by seventy if the sales factor has a denominator of zero.

(D) A financial institution shall calculate the property factor as follows:

(1) The property factor is a fraction, the numerator of which is the average value of real property and tangible personal property rented to the taxpayer that is located or used within this state during the taxable year, the average value of real and tangible personal property owned by the taxpayer that is located or used within this state during the taxable year, and the average value of the taxpayer's loans and credit card receivables that are located within this state during the taxable year; and the denominator of which is the average value of all such property located or used within and without this state during the taxable year.

(2)(a) The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation, or amortization.

(b) Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged-off in whole or in part for federal income tax purposes, the portion of the loan charged-off is not outstanding. A specifically allocated reserve established pursuant to financial accounting guidelines which is treated as charged-off for federal income tax purposes shall be treated as charged-off for purposes of this section.

(c) Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged-off in whole or in part for federal income tax purposes, the portion of the receivable charged-off is not outstanding.

(3) The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two. If averaging on this basis does not properly reflect average value, the tax commissioner may require averaging on a more frequent basis. The taxpayer may elect to average on a more frequent basis. When averaging on a more frequent basis is required by the tax commissioner or is elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect to property within and without this state and on all subsequent returns unless the taxpayer receives prior permission from the tax commissioner or the tax commissioner requires a different method of determining value.

(4)(a) The average value of real property and tangible personal property that the taxpayer has rented from another and is not treated as property owned by the taxpayer for federal income tax purposes, shall be determined annually by multiplying the gross rents payable during the taxable year by eight.

(b) Where the use of the general method described in division (D)(4)(a) of this section results in inaccurate valuations of rented property, any other method which properly reflects the value may be adopted by the tax commissioner or by the taxpayer when approved in writing by the tax commissioner. Once approved, such other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the tax commissioner or the tax commissioner requires a different method of valuation.

(5)(a) Except as described in division (D)(5)(b) of this section, real property and tangible personal property owned by or rented to the taxpayer is considered to be located within this state if it is physically located, situated, or used within this state.

(b) Transportation property is included in the numerator of the property factor to the extent that the property is used in this state. The extent an aircraft will be deemed to be used in this state and the amount of value that is to be included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere. If the extent of the use of any transportation property within this state cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(6)(a)(i) A loan, other than a loan or advance described in division (D)(6)(d) of this section, is considered to be located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.

(ii) A loan is properly assigned to the regular place of business with which it has a preponderance of substantive contacts. A loan assigned by the taxpayer to a regular place of business without the state shall be presumed to have been properly assigned if:

(I) The taxpayer has assigned, in the regular course of its business, such loan on its records to a regular place of business consistent with federal or state regulatory requirements;

(II) Such assignment on its records is based upon substantive contacts of the load to such regular place of business; and

(III) The taxpayer uses the records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.

(iii) The presumption of proper assignment of a loan provided in division (D)(6)(a)(ii) of this section may be rebutted upon a showing by the tax commissioner, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding such loan did not occur at the regular place of business to which it was assigned on the taxpayer's records. When such presumption has been rebutted, the loan shall then be located within this state if (1) the taxpayer had a regular place of business within this state at the time the loan was made; and (2) the taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding such ~~load~~ loan did not occur within this state.

(b) In the case of a loan which is assigned by the taxpayer to a place without this state which is not a regular place of business, it shall be presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of evidence, that the preponderance of substantive contacts regarding the loan occurred within this state if, at the time the loan was made the taxpayer's commercial domicile was within this state.

(c) To determine the state in which the preponderance of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue shall be reviewed on a case-by-case basis and consideration shall be given to such activities as the solicitation, investigation, negotiation, approval, and administration of the loan. The terms "solicitation," "investigation," "negotiation," "approval," and "administration" are defined as follows:

(i) "Solicitation" is either active or passive. Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. Such activity is located at the regular place of business which the taxpayer's employee is regularly connected with or working out of, regardless of where the services of such employee were actually performed. Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.

(ii) "Investigation" is the procedure whereby employees of the taxpayer determine the creditworthiness of the customer as well as the degree of risk involved in making a particular agreement. Such activity is located at the

regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed.

(iii) Negotiation is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement, such as the amount, duration, interest rate, frequency of repayment, currency denomination, and security required. Such activity is located at the regular place of business to which the taxpayer's employees are regularly connected or working from, regardless of where the services of such employees were actually performed.

(iv) "Approval" is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement. Such activity is located at the regular place of business to which the taxpayer's employees are regularly connected or working from, regardless of where the services of such employees were actually performed. If the board of directors makes the final determination, such activity is located at the commercial domicile of the taxpayer.

(v) "Administration" is the process of managing the account. This process includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement, and proceeding against the borrower or the security interest if the borrower is in default. Such activity is located at the regular place of business that oversees this activity.

(d) A loan or advance to a subsidiary corporation at least fifty-one per cent of whose common stock is owned by the financial institution shall be allocated in and out of the state by the application of a ratio whose numerator is the sum of the net book value of the subsidiary's real property owned in this state and the subsidiary's tangible personal property owned in this state and whose denominator is the sum of the subsidiary's real property owned wherever located and the subsidiary's tangible personal property owned wherever located. For purposes of calculating this ratio, the taxpayer shall determine net book value in accordance with generally accepted accounting principles. If the subsidiary corporation owns at least fifty-one per cent of the common stock of another corporation, the ratio shall be calculated by including the other corporation's real property and tangible personal property. The calculation of the ratio applies with respect to all lower-tiered subsidiaries, provided that the immediate parent corporation of the subsidiary owns at least fifty-one per cent of the common stock of that subsidiary.

(7) For purposes of determining the location of credit card receivables, credit card receivables shall be treated as loans and shall be subject to

division (D)(6) of this section.

(8) A loan that has been properly assigned to a state shall, absent any change of material fact, remain assigned to that state for the length of the original term of the loan. Thereafter, the loan may be properly assigned to another state if the loan has a preponderance of substantive contact to a regular place of business there.

(E) A financial institution shall calculate the payroll factor as follows:

(1) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation, and the denominator of which is the total compensation paid both within and without this state during the taxable year.

(2) Compensation is paid in this state if any one of the following tests, applied consecutively, is met:

(a) The employee's services are performed entirely within this state.

(b) The employee's services are performed both within and without this state, but the service performed without this state is incidental to the employee's service within this state. The term "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction.

(c) The employee's services are performed both within and without this state, and:

(i) The employee's principal base of operations is within this state; or

(ii) There is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state; or

(iii) The principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's residence is in this state.

(F) A financial institution shall calculate the sales factor as follows:

(1) The sales factor is a fraction, the numerator of which is the receipts of the taxpayer in this state during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator.

(2) The numerator of the sales factor includes receipts from the lease or rental of real property owned by the taxpayer if the property is located within this state, or receipts from the sublease of real property if the property is located within this state.

(3)(a) Except as described in division (F)(3)(b) of this section the

numerator of the sales factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.

(b) Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the sales factor to the extent that the property is used in this state. The extent an aircraft will be deemed to be used in this state and the amount of receipts that is to be included in the numerator of this state's sales factor is determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft. If the extent of the use of any transportation property within this state cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(4)(a) The numerator of the sales factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the receipts described in this paragraph are included in the numerator of the sales factor if more than fifty per cent of the fair market value of the real property is located within this state. If more than fifty per cent of the fair market value of the real property is not located within any one state, then the receipts described in this paragraph shall be included in the numerator of the sales factor if the borrower is located in this state.

(b) The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made and any and all subsequent substitutions of collateral shall be disregarded.

(5) The numerator of the sales factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.

(6) The numerator of the sales factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of section 1286 of the Internal Revenue Code.

(a) The amount of net gains, but not less than zero, from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the sales factor pursuant to division (F)(4) of this section and the denominator of which is the total amount of

interest and fees or penalties in the nature of interest from loans secured by real property.

(b) The amount of net gains, but not less than zero, from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the sales factor pursuant to division (F)(5) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(7) The numerator of the sales factor includes interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

(8) The numerator of the sales factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to division (F)(7) of this section and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(9) The numerator of the sales factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to division (F)(7) of this section and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(10) The numerator of the sales factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. Such receipts shall be computed net of any card holder charge backs, but shall not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

(11)(a)(i) The numerator of the sales factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the sales factor pursuant to division (F)(4) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The numerator of the sales factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the sales

factor pursuant to division (F)(5) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(b) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the sales factor shall include such fees if the borrower is located in this state.

(12) The numerator of the sales factor includes receipts from services not otherwise apportioned under this section if the service is performed in this state. If the service is performed both within and without this state, the numerator of the sales factor includes receipts from services not otherwise apportioned under this section, if a greater proportion of the income producing activity is performed in this state based on cost of performance.

(13)(a) Interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities shall be included in the sales factor. Investment assets and activities and trading assets and activities include but are not limited to: investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions. With respect to the investment and trading assets and activities described in divisions (F)(13)(a)(i) and (ii) of this section, the sales factor shall include the amounts described in such divisions.

(i) The sales factor shall include the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(ii) The sales factor shall include the amount by which interest, dividends, gains, and other income from trading assets and activities, including, but not limited to, assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(b) The numerator of the sales factor includes interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities described in division (F)(13)(a) of this section that are attributable to this state.

(i) The amount of interest, other than interest described in division (F)(13)(b)(iv) of this section, dividends, other than dividends described in

that division, net gains, but not less than zero, and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(ii) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in division (F)(13)(a)(i) of this section from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

(iii) The amount of interest, dividends, gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transaction, but excluding amounts described in division (F)(13)(b)(i) or (ii) of this section, attributable to this state and included in the numerator is determined by multiplying the amount described in division (F)(13)(a)(ii) of this section by a fraction, the numerator of which is the average value of such trading assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(iv) The amount of dividends received on the capital stock of, and the amount of interest received from loans and advances to, subsidiary corporations at least fifty-one per cent of whose common stock is owned by the reporting financial institution shall be allocated in and out of this state by the application of a ratio whose numerator is the sum of the net book value of the payor's real property owned in this state and the payor's tangible personal property owned in this state and whose denominator is the sum of the net book value of the payor's real property owned wherever located and the payor's tangible personal property owned wherever located. For purposes of calculating this ratio, the taxpayer shall determine net book value in accordance with generally accepted accounting principles.

(v) For purposes of this division, average value shall be determined using the rules for determining the average value of tangible personal

property set forth in division (D)(2) and (3) of this section.

(c) In lieu of using the method set forth in division (F)(13)(b) of this section, the taxpayer may elect, or the tax commissioner may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in division (F)(13)(c) of this section.

(i) The amount of interest, other than interest described in division (F)(13)(b)(iv) of this section, dividends, other than dividends described in that division, net gains, but not less than zero, and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross income from such assets and activities which are properly assigned to a regular place of business of the taxpayer within this state, and the denominator of which is the gross income from all such assets and activities.

(ii) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in division (F)(13)(a)(i) of this section from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.

(iii) The amount of interest, dividends, gains, and other income from trading assets and activities, including, but not limited to, assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, but excluding amounts described in division (F)(13)(a)(i) or (ii) of this section, attributable to this state and included in the numerator, is determined by multiplying the amount described in division (F)(13)(a)(ii) of this section by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(iv) The amount of dividends received on the capital stock of, and the amount of interest received from loans and advances to, subsidiary corporations at least fifty-one per cent of whose common stock is owned by the reporting financial institution shall be allocated in and out of this state by the application of a ratio whose numerator is the sum of the net book value of the payor's real property owned in this state and the payor's tangible

personal property owned in this state and whose denominator is the sum of the payor's real property owned wherever located and the payor's tangible personal property owned wherever located. For purposes of calculating this ratio, the taxpayer shall determine net book value in accordance with generally accepted accounting principles.

(d) If the taxpayer elects or is required by the tax commissioner to use the method set forth in division (F)(13)(c) of this section, it shall use this method on all subsequent returns unless the taxpayer receives prior permission from the tax commissioner to use or the tax commissioner requires a different method.

(e) The taxpayer shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one such regular place of business is in this state and one such regular place of business is outside this state such asset or activity shall be considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, such policies and guidelines shall be presumed to be established at the commercial domicile of the taxpayer.

(14) The numerator of the sales factor includes all other receipts if either:

(a) The income-producing activity is performed solely in this state; or

(b) The income-producing activity is performed both within and without this state and a greater proportion of the income-producing activity is performed within this state than in any other state, based on costs of performance.

(G) A qualified institution may calculate the base upon which the fee provided for in division (D) of section 5733.06 of the Revised Code is determined for each of the tax years ~~1998, 1999, 2000, 2001, 2002, and 2003~~ year by multiplying the value of its issued and outstanding shares of stock determined under division (B) of this section by a single deposits fraction whose numerator is the deposits assigned to branches in this state and whose denominator is the deposits assigned to branches everywhere. Deposits shall be assigned to branches in the same manner in which the assignment is made for regulatory purposes. If the base calculated under this division is less than the base calculated under division (C) of this section,

then the qualifying institution may elect to substitute the base calculated under this division for the base calculated under division (C) of this section. Such election may be made annually for each ~~of the tax years 1998, 1999, 2000, 2001, 2002, and 2003~~ year on the corporate report. The election need not accompany the report; rather, the election may accompany a subsequently filed but timely application for refund, a subsequently filed but timely amended report, or a subsequently filed but timely petition for reassessment. The election is not irrevocable and it applies only to the specified tax year. Nothing in this division shall be construed to extend any statute of limitations set forth in this chapter.

(H) If the apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax commissioner may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (1) Separate accounting;
- (2) The exclusion of any one or more of the factors;
- (3) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or
- (4) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's value.

Sec. 5733.06. The tax hereby charged each corporation subject to this chapter shall be the greater of the sum of divisions (A) and (B) of this section, after the reduction, if any, provided by division (J) of this section, or division (C) of this section, after the reduction, if any, provided by division (J) of this section, except that the tax hereby charged each financial institution subject to this chapter shall be the amount computed under division (D) of this section:

(A) Except as set forth in division (F) of this section, five and one-tenth per cent upon the first fifty thousand dollars of the value of the taxpayer's issued and outstanding shares of stock as determined under division (B) of section 5733.05 of the Revised Code;

(B) Except as set forth in division (F) of this section, eight and one-half per cent upon the value so determined in excess of fifty thousand dollars; or

(C)(1) Except as otherwise provided under division (G) of this section, four mills times that portion of the value of the issued and outstanding shares of stock as determined under division (C) of section 5733.05 of the Revised Code. For the purposes of division (C) of this section, division (C)(2) of section 5733.065, and division (C) of section 5733.066 of the Revised Code, the value of the issued and outstanding shares of stock of an eligible corporation for tax year 2003 through tax year 2007, or of a

qualified holding company, is zero.

(2) As used in division (C) of this section, "eligible corporation" means a person treated as a corporation for federal income tax purposes that meets all of the following criteria:

(a) The corporation conducts business for an entire taxable year as a qualified trade or business as defined by division (C) of section 122.15 of the Revised Code.

(b) The corporation uses more than fifty per cent of the corporation's assets, based on net book value, that are located in Ohio solely to conduct activities that constitute a qualified trade or business as defined by section 122.15 of the Revised Code.

(c) The corporation has been formed or organized not more than three years before the report required to be filed by section 5733.02 of the Revised Code is due, without regard to any extensions.

(d) The corporation is not a related member, as defined in section 5733.042 of the Revised Code, at any time during the taxable year with respect to another person treated as a corporation for federal income tax purposes. A corporation is not a related member if during the entire taxable year at least seventy-five per cent of the corporation's stock is owned directly or through a pass-through entity by individuals, estates, and grantor trusts, and the individuals, estates, and grantor trusts do not directly or indirectly own more than twenty per cent of the value of another person treated as a corporation for federal income tax purposes that is conducting a qualified trade or business.

(D) The tax charged each financial institution subject to this chapter shall be that portion of the value of the issued and outstanding shares of stock as determined under division (A) of section 5733.05 of the Revised Code, multiplied by the following amounts:

- (1) For tax years prior to the 1999 tax year, fifteen mills;
- (2) For the 1999 tax year, fourteen mills;
- (3) For tax year 2000 and thereafter, thirteen mills.

(E) No tax shall be charged from any corporation that has been adjudicated bankrupt, or for which a receiver has been appointed, or that has made a general assignment for the benefit of creditors, except for the portion of the then current tax year during which the tax commissioner finds such corporation had the power to exercise its corporate franchise unimpaired by such proceedings or act. The minimum payment for all corporations shall be fifty dollars.

The tax charged to corporations under this chapter for the privilege of engaging in business in this state, which is an excise tax levied on the value

of the issued and outstanding shares of stock, shall in no manner be construed as prohibiting or otherwise limiting the powers of municipal corporations, joint economic development zones created under section 715.691 of the Revised Code, and joint economic development districts created under section 715.70 or 715.71 or sections 715.72 to 715.81 of the Revised Code in this state to impose an income tax on the income of such corporations.

(F) If two or more taxpayers satisfy the ownership or control requirements of division (A) of section 5733.052 of the Revised Code, each such taxpayer shall substitute "the taxpayer's pro-rata amount" for "fifty thousand dollars" in divisions (A) and (B) of this section. For purposes of this division, "the taxpayer's pro-rata amount" is an amount that, when added to the other such taxpayers' pro-rata amounts, does not exceed fifty thousand dollars. For the purpose of making that computation, the taxpayer's pro-rata amount shall not be less than zero. Nothing in this division derogates from or eliminates the requirement to make the alternative computation of tax under division (C) of this section.

(G) The tax liability of any corporation under division (C) of this section shall not exceed one hundred fifty thousand dollars.

(H)(1) For the purposes of division (H) of this section, "exiting corporation" means a corporation that satisfies all of the following conditions:

(a) The corporation had nexus with or in this state under the Constitution of the United States during any portion of a calendar year;

(b) The corporation was not a corporation described in division (A) of section 5733.01 of the Revised Code on the first day of January immediately following that calendar year;

(c) The corporation was not a financial institution on the first day of January immediately following that calendar year;

(d) If the corporation was a transferor as defined in section 5733.053 of the Revised Code, the corporation's transferee was not required to add to the transferee's net income the income of the transferor pursuant to division (B) of that section;

(e) During any portion of that calendar year, or any portion of the immediately preceding calendar year, the corporation had net income that was not included in a report filed by the corporation or its transferee pursuant to section 5733.02, 5733.021, 5733.03, 5733.031, or 5733.053 of the Revised Code;

(f) The corporation would have been subject to the tax computed under divisions (A), (B), (C), (F), and (G) of this section if the corporation is

assumed to be a corporation described in division (A) of section 5733.01 of the Revised Code on the first day of January immediately following the calendar year to which division (H)(1)(a) of this section refers.

(2) For the purposes of division (H) of this section, "unreported net income" means net income that was not previously included in a report filed pursuant to section 5733.02, 5733.021, 5733.03, 5733.031, or 5733.053 of the Revised Code and that was realized or recognized during the calendar year to which division (H)(1) of this section refers or the immediately preceding calendar year.

(3) Each exiting corporation shall pay a tax computed by first allocating and apportioning the unreported net income pursuant to division (B) of section 5733.05 and section 5733.051 and, if applicable, section 5733.052 of the Revised Code. The exiting corporation then shall compute the tax due on its unreported net income allocated and apportioned to this state by applying divisions (A), (B), and (F) of this section to that income.

(4) Divisions (C) and (G) of this section, division (D)(2) of section 5733.065, and division (C) of section 5733.066 of the Revised Code do not apply to an exiting corporation, but exiting corporations are subject to every other provision of this chapter.

(5) Notwithstanding division (B) of section 5733.01 or sections 5733.02, 5733.021, and 5733.03 of the Revised Code to the contrary, each exiting corporation shall report and pay the tax due under division (H) of this section on or before the thirty-first day of May immediately following the calendar year to which division (H)(1)(a) of this section refers. The exiting corporation shall file that report on the form most recently prescribed by the tax commissioner for the purposes of complying with sections 5733.02 and 5733.03 of the Revised Code. Upon request by the corporation, the tax commissioner may extend the date for filing the report.

(6) If, on account of the application of section 5733.053 of the Revised Code, net income is subject to the tax imposed by divisions (A) and (B) of this section, such income shall not be subject to the tax imposed by division (H)(3) of this section.

(7) The amendments made to division (H) of this section by Am. Sub. S.B. 287 of the 123rd general assembly do not apply to any transfer, as defined in section 5733.053 of the Revised Code, for which negotiations began prior to January 1, 2001, and that was commenced in and completed during calendar year 2001, unless the taxpayer makes an election prior to December 31, 2001, to apply those amendments.

(8) The tax commissioner may adopt rules governing division (H) of this section.

(I) Any reference in the Revised Code to "the tax imposed by section 5733.06 of the Revised Code" or "the tax due under section 5733.06 of the Revised Code" includes the taxes imposed under sections 5733.065 and 5733.066 of the Revised Code.

(J)(1) Division (J) of this section applies solely to a combined company. Section 5733.057 of the Revised Code shall apply when calculating the adjustments required by division (J) of this section.

(2) Subject to division (J)(4) of this section, the total tax calculated in divisions (A) and (B) of this section shall be reduced by an amount calculated by multiplying such tax by a fraction, the numerator of which is the total taxable gross receipts attributed to providing public utility activity other than as an electric company under section 5727.03 of the Revised Code for the year upon which the taxable gross receipts are measured immediately preceding the tax year, and the denominator of which is the total gross receipts from all sources for the year upon which the taxable gross receipts are measured immediately preceding the tax year. Nothing herein shall be construed to exclude from the denominator any item of income described in section 5733.051 of the Revised Code.

(3) Subject to division (J)(4) of this section, the total tax calculated in division (C) of this section shall be reduced by an amount calculated by multiplying such tax by the fraction described in division (J)(2) of this section.

(4) In no event shall the reduction provided by division (J)(2) or (J)(3) of this section exceed the amount of the excise tax paid in accordance with section 5727.38 of the Revised Code, for the year upon which the taxable gross receipts are measured immediately preceding the tax year.

Sec. 5733.0610. (A) A refundable corporation franchise tax credit granted by the tax credit authority under section 122.17 of the Revised Code may be claimed under this chapter, in the order required under section 5733.98 of the Revised Code. For purposes of making tax payments under this chapter, taxes equal to the amount of the refundable credit shall be considered to be paid to this state on the first day of the tax year. The refundable credit shall not be claimed for any tax years following the calendar year in which a relocation of employment positions occurs in violation of an agreement entered into under section 122.171 of the Revised Code.

(B) A nonrefundable corporation franchise tax credit granted by the tax credit authority under section 122.171 of the Revised Code may be claimed under this chapter, in the order required under section 5733.98 of the Revised Code.

Sec. 5733.09. (A) An incorporated company, whether foreign or domestic, owning and operating a public utility in this state, and required by law to file reports with the tax commissioner and to pay an excise tax upon its gross receipts, and insurance, fraternal, beneficial, bond investment, and other corporations required by law to file annual reports with the superintendent of insurance and dealers in intangibles, the shares of which are, or the capital or ownership in capital employed by such dealer is, subject to the taxes imposed by section 5707.03 of the Revised Code, shall not be subject to this chapter, except for sections 5733.031, 5733.042, 5733.05, 5733.052, 5733.053, 5733.069, 5733.0611, 5733.40, 5733.41, and sections 5747.40 to 5747.453 of the Revised Code. However, for reports required to be filed under section 5725.14 of the Revised Code in 2003 and thereafter, nothing in this section shall be construed to exempt the property of any dealer in intangibles under section 5725.13 of the Revised Code from the tax imposed under section 5707.03 of the Revised Code. An electric company subject to the filing requirements of section 5727.08 of the Revised Code or otherwise having nexus with or in this state under the Constitution of the United States, or any other corporation having any gross receipts directly attributable to providing public utility service as an electric company or having any property directly attributable to providing public utility service as an electric company, is subject to this chapter.

(B) A corporation that has made an election under subchapter S, chapter one, subtitle A, of the Internal Revenue Code for its taxable year under such code is exempt from the tax imposed by section 5733.06 of the Revised Code that is based on that taxable year.

A corporation that makes such an election shall file a notice of such election with the tax commissioner between the first day of January and the thirty-first day of March of each tax year that the election is in effect.

(C) An entity defined to be a "real estate investment trust" by section 856 of the Internal Revenue Code, a "regulated investment company" by section 851 of the Internal Revenue Code, or a "real estate mortgage investment conduit" by section 860D of the Internal Revenue Code, is exempt from taxation for a tax year as a corporation under this chapter and is exempt from taxation for a return year as a dealer in intangibles under Chapter 5725. of the Revised Code if it provides the report required by this division. By the last day of March of the tax or return year the entity shall submit to the tax commissioner the name of the entity with a list of the names, addresses, and social security or federal identification numbers of all investors, shareholders, and other similar investors who owned any interest or invested in the entity during the preceding calendar year. The

ssioner may extend the date by which the report must be submitted for reasonable cause shown by the entity. The commissioner may prescribe the form of the report required for exemption under this division.

(D)(1) As used in this division:

(a) "Commercial printer" means a person primarily engaged in the business of commercial printing. However, "commercial printer" does not include a person primarily engaged in the business of providing duplicating services using photocopy machines or other xerographic processes.

(b) "Commercial printing" means printing by one or more common processes such as letterpress, lithography, gravure, screen, or digital imaging, and includes related activities such as binding, platemaking, prepress operation, cartographic composition, and typesetting.

(c) "Contract for printing" means an oral or written agreement for the purchase of printed materials produced by a commercial printer.

(d) "Intangible property located at the premises of a commercial printer" means intangible property of any kind owned or licensed by a customer of the commercial printer and furnished to the commercial printer for use in commercial printing.

(e) "Printed material" means any tangible personal property produced or processed by a commercial printer pursuant to a contract for printing.

(f) "Related member" has the same meaning as in division (A)(6) of section 5733.042 of the Revised Code without regard to division (B) of that section.

(2) Except as provided in divisions (D)(3) and (4) of this section, a corporation not otherwise subject to the tax imposed by section 5733.06 of the Revised Code for a tax year does not become subject to that tax for the tax year solely by reason of any one or more of the following occurring in this state during the taxable year that ends immediately prior to the tax year:

(a) Ownership by the corporation or a related member of the corporation of tangible personal property or intangible property located during all or any portion of the taxable year or on the first day of the tax year at the premises of a commercial printer with which the corporation or the corporation's related member has a contract for printing with respect to such property or the premises of a commercial printer's related member with which the corporation or the corporation's related member has a contract for printing with respect to such property;

(b) Sales by the corporation or a related member of the corporation of property produced at and shipped or distributed from the premises of a commercial printer with which the corporation or the corporation's related member has a contract for printing with respect to such property or the

premises of a commercial printer's related member with which the corporation or the corporation's related member has a contract for printing with respect to such property;

(c) Activities of employees, officers, agents, or contractors of the corporation or a related member of the corporation on the premises of a commercial printer with which the corporation or the corporation's related member has a contract for printing or the premises of a commercial printer's related member with which the corporation or the corporation's related member has a contract for printing, where the activities are directly and solely related to quality control, distribution, or printing services, or any combination thereof, performed by or at the direction of the commercial printer or the commercial printer's related member.

(3) The exemption under this division does not apply for a taxable year to any corporation having on the first day of January of the tax year or at any time during the taxable year ending immediately preceding the first day of January of the tax year a related member which, on the first day of January of the tax year or during any portion of such taxable year of the corporation, has nexus in or with this state under the Constitution of the United States or holds a certificate of compliance with the laws of this state authorizing it to do business in this state.

(4) With respect to allowing the exemption under this division, the tax commissioner shall be guided by the doctrines of "economic reality," "sham transaction," "step transaction," and "substance over form." A corporation shall bear the burden of establishing by a preponderance of the evidence that any transaction giving rise to an exemption claimed under this division did not have as a principal purpose the avoidance of any portion of the tax imposed by section 5733.06 of the Revised Code.

Application of the doctrines listed in division (D)(4) of this section is not limited to this division.

Sec. 5733.11. (A) If any corporation required to file a report under this chapter fails to file the report within the time prescribed, files an incorrect report, or fails to remit the full amount of the tax due for the period covered by the report, the tax commissioner may make an assessment against the corporation for any deficiency for the period for which the report or tax is due, based upon any information in the commissioner's possession.

No assessment shall be made or issued against a corporation more than three years after the later of the final date the report subject to assessment was required to be filed or the date the report was filed. Such time limit may be extended if both the corporation and the commissioner consent in writing to the extension or if an agreement waiving or extending the time limit has

been entered into pursuant to section 122.171 of the Revised Code. Any such extension shall extend the three-year time limit in division (B) of section 5733.12 of the Revised Code for the same period of time. There shall be no bar or limit to an assessment against a corporation that fails to file a report subject to assessment as required by this chapter, or that files a fraudulent report.

The commissioner shall give the corporation assessed written notice of the assessment as provided in section 5703.37 of the Revised Code.

(B) Unless the corporation to which the notice of assessment is directed files with the commissioner within sixty days after service thereof, either personally or by certified mail as provided in section 5703.056 of the Revised Code, a petition for reassessment in writing, signed by the authorized agent of the corporation assessed having knowledge of the facts, and makes payment of the portion of the assessment required by division (E) of this section, the assessment shall become final, and the amount of the assessment shall be due and payable from the corporation assessed to the treasurer of state. The petition shall indicate the corporation's objections, but additional objections may be raised in writing if received prior to the date shown on the final determination by the commissioner.

Unless the petitioner waives a hearing, the commissioner shall assign a time and place for the hearing on the petition and notify the petitioner of the time and place of the hearing by personal service or certified mail, but the commissioner may continue the hearing from time to time if necessary.

The commissioner may make such correction to the assessment as the commissioner finds proper. The commissioner shall serve a copy of the final determination on the petitioner by personal service or by certified mail, and the commissioner's decision in the matter shall be final, subject to appeal as provided in section 5717.02 of the Revised Code. Only objections decided on the merits by the board of tax appeals or a court shall be given collateral estoppel or res judicata effect in considering an application for refund of amounts paid pursuant to the assessment.

(C) After an assessment becomes final, if any portion of the assessment remains unpaid, including accrued interest, a certified copy of the commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the corporation has an office or place of business in this state, the county in which the corporation's statutory agent is located, or Franklin county.

Immediately upon the filing of the entry, the clerk shall enter a judgment against the corporation assessed in the amount shown on the entry. The judgment may be filed by the clerk in a loose-leaf book entitled "special

judgments for state corporate franchise and litter taxes," and shall have the same effect as other judgments. Execution shall issue upon the judgment upon the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.

The portion of an assessment not paid within sixty days after the day the assessment was issued shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the tax commissioner issues the assessment until the assessment is paid. Interest shall be paid in the same manner as the tax and may be collected by issuing an assessment under this section.

(D) All money collected under this section shall be considered as revenue arising from the taxes imposed by this chapter.

(E) The portion of an assessment which must be paid upon the filing of a petition for reassessment shall be as follows:

(1) If the sole item objected to is the assessed penalty or interest, payment of the assessment, including interest but not penalty, is required;

(2) If the corporation assessed failed to file, prior to the date of issuance of the assessment, the annual report required by section 5733.02 of the Revised Code, any amended report required by division (C) of section 5733.031 of the Revised Code for the tax year at issue, or any amended report required by division (D) of section 5733.067 of the Revised Code to indicate a reduction in the amount of the credit provided under that section, payment of the assessment, including interest but not penalty, is required;

(3) If the corporation assessed filed, prior to the date of issuance of the assessment, the annual report required by section 5733.02 of the Revised Code, all amended reports required by division (C) of section 5733.031 of the Revised Code for the tax year at issue, and all amended reports required by division (D) of section 5733.067 of the Revised Code to indicate a reduction in the amount of the credit provided under that section, and a balance of the taxes shown due on the reports as computed on the reports remains unpaid, payment of only that portion of the assessment representing the unpaid balance of tax and interest is required;

(4) If the corporation assessed does not dispute that it is a taxpayer but claims the protections of section 101 of Public Law 86-272, 73 Stat. 555, 15 U.S.C.A. 381, as amended, payment of only that portion of the assessment representing any balance of taxes shown due on the corporation's annual report required by section 5733.02 of the Revised Code, as computed on the report, that remains unpaid, and that represents taxes imposed by division (C) of section 5733.06, division (C)(2) of section 5733.065, and division (C) of section 5733.066 of the Revised Code, together with all related interest, is

required;

(5) If none of the conditions specified in divisions (E)(1) to (4) of this section apply, or if the corporation assessed disputes that it is a taxpayer, no payment is required.

(F) Notwithstanding the fact that a petition for reassessment is pending, the corporation may pay all or a portion of the assessment that is the subject of the petition. The acceptance of a payment by the treasurer of state does not prejudice any claim for refund upon final determination of the petition.

If upon final determination of the petition an error in the assessment is corrected by the commissioner, upon petition so filed or pursuant to a decision of the board of tax appeals or any court to which the determination or decision has been appealed, so that the amount due from the corporation under the corrected assessment is less than the portion paid, there shall be issued to the corporation, its assigns, or legal representative a refund in the amount of the overpayment as provided by section 5733.12 of the Revised Code, with interest on that amount as provided by section 5733.26 of the Revised Code, subject to section 5733.121 of the Revised Code.

Sec. 5733.45. (A) For purposes of this section, a "qualifying dealer in intangibles" is a dealer in intangibles that is a member of a qualifying controlled group of which a financial institution is also a member on the first day of the financial institution's tax year.

(B) For tax years 2002 and thereafter, there is hereby allowed to each financial institution a nonrefundable credit against the tax imposed by section 5733.06 of the Revised Code. The amount of the credit shall be computed in accordance with division (C) of this section. The credit shall be claimed in the order prescribed by section 5733.98 of the Revised Code. The credit shall not exceed the amount of tax otherwise due under section 5733.06 of the Revised Code after deducting any other credits that precede the credit claimed under this section in that order.

(C) Subject to division (D) of this section, the amount of the nonrefundable credit is the lesser of the amount described in division (C)(1) of this section or the amount described in division (C)(2) of this section.

(1) The amount of tax that a qualifying dealer in intangibles paid under Chapter 5707. of the Revised Code during the calendar year immediately preceding the financial institution's tax year. Such amount shall be reduced, but not below zero, by any refunds of such tax received by the qualifying dealer in intangibles under Chapter 5703. of the Revised Code during that calendar year.

(2) The product of the amounts described in division (C)(2)(a) to (C)(2)(c) of this section. The amount described in division (C)(2)(a) of this

section shall be ascertained on the last day of the financial institution's taxable year immediately preceding the tax year.

(a) The cost of the financial institution's direct investment in the capital stock of the qualifying dealer in intangibles. The cost does not include any appreciation or goodwill to the extent those amounts are allowed as an exempted asset on the financial institution's annual report.

(b) The ratio described in section 5725.15 of the Revised Code for the calendar year immediately preceding the financial institution's tax year;

(c) The tax rate imposed under division (D) of section 5707.03 of the Revised Code for the calendar year immediately preceding the financial institution's tax year.

(D)(1) The principles and concepts set forth in section 5733.057 of the Revised Code shall apply to ascertain if a dealer in intangibles is a member of a qualifying controlled group of which the financial institution also is a member and to ascertain the cost of the financial institution's direct investment in the capital stock of the qualifying dealer in intangibles.

(2) Notwithstanding section 5733.111 to the contrary, a financial institution claiming the credit provided by this section has the burden to establish by a preponderance of the evidence that none of the doctrines in that section would apply to deny to the financial institution all or a part of the credit otherwise provided by this section.

(E) For tax years 2002 and 2003, the credit allowed by this section applies only if the qualifying dealer in intangibles on account of which the financial institution is claiming the credit submits to the Tax Commissioner, not later than January 15, 2002, a written statement that the qualifying dealer in intangibles irrevocably agrees that it will not seek a refund of the tax paid by the dealer under section 5707.03 of the Revised Code in 2000 and 2001, and irrevocably agrees to continue paying that tax in 2002, regardless of the amendment of section 5725.26 of the Revised Code by Am. Sub. H.B. 405 of the 124th general assembly.

Sec. 5733.98. (A) To provide a uniform procedure for calculating the amount of tax imposed by section 5733.06 of the Revised Code that is due under this chapter, a taxpayer shall claim any credits to which it is entitled in the following order, except as otherwise provided in section 5733.058 of the Revised Code:

(1) The credit for taxes paid by a qualifying pass-through entity allowed under section 5733.0611 of the Revised Code;

(2) The credit allowed for financial institutions under section 5733.45 of the Revised Code;

(3) The credit for qualifying affiliated groups under section 5733.068 of

the Revised Code;

~~(3)~~ ~~(4)~~ The subsidiary corporation credit under section 5733.067 of the Revised Code;

~~(4)~~ ~~(5)~~ The savings and loan assessment credit under section 5733.063 of the Revised Code;

~~(5)~~ ~~(6)~~ The credit for recycling and litter prevention donations under section 5733.064 of the Revised Code;

~~(6)~~ ~~(7)~~ The credit for employers that enter into agreements with child day-care centers under section 5733.36 of the Revised Code;

~~(7)~~ ~~(8)~~ The credit for employers that reimburse employee child day-care expenses under section 5733.38 of the Revised Code;

~~(8)~~ ~~(9)~~ The credit for maintaining railroad active grade crossing warning devices under section 5733.43 of the Revised Code;

~~(9)~~ ~~(10)~~ The credit for purchases of lights and reflectors under section 5733.44 of the Revised Code;

~~(10)~~ ~~(11)~~ The job retention credit under division (B) of section 5733.0610 of the Revised Code;

~~(12)~~ The credit for manufacturing investments under section 5733.061 of the Revised Code;

~~(11)~~ ~~(13)~~ The credit for purchases of new manufacturing machinery and equipment under section 5733.31 or section 5733.311 of the Revised Code;

~~(12)~~ ~~(14)~~ The second credit for purchases of new manufacturing machinery and equipment under section 5733.33 of the Revised Code;

~~(13)~~ ~~(15)~~ The job training credit under section 5733.42 of the Revised Code;

~~(14)~~ ~~(16)~~ The credit for qualified research expenses under section 5733.351 of the Revised Code;

~~(15)~~ ~~(17)~~ The enterprise zone credit under section 5709.66 of the Revised Code;

~~(16)~~ ~~(18)~~ The credit for the eligible costs associated with a voluntary action under section 5733.34 of the Revised Code;

~~(17)~~ ~~(19)~~ The credit for employers that establish on-site child day-care under section 5733.37 of the Revised Code;

~~(18)~~ ~~(20)~~ The credit for purchases of qualifying grape production property under section 5733.32 of the Revised Code;

~~(19)~~ ~~(21)~~ The export sales credit under section 5733.069 of the Revised Code;

~~(20)~~ ~~(22)~~ The credit for research and development and technology transfer investors under section 5733.35 of the Revised Code;

~~(21)~~ ~~(23)~~ The enterprise zone credits under section 5709.65 of the

ed Code;

~~(22)~~(24) The credit for using Ohio coal under section 5733.39 of the Revised Code;

~~(23)~~(25) The refundable jobs creation credit under division (A) of section 5733.0610 of the Revised Code.

(B) For any credit except the refundable jobs creation credit, the amount of the credit for a tax year shall not exceed the tax due after allowing for any other credit that precedes it in the order required under this section. Any excess amount of a particular credit may be carried forward if authorized under the section creating that credit.

Sec. 5739.01. As used in this chapter:

(A) "Person" includes individuals, receivers, assignees, trustees in bankruptcy, estates, firms, partnerships, associations, joint-stock companies, joint ventures, clubs, societies, corporations, the state and its political subdivisions, and combinations of individuals of any form.

(B) "Sale" and "selling" include all of the following transactions for a consideration in any manner, whether absolutely or conditionally, whether for a price or rental, in money or by exchange, and by any means whatsoever:

(1) All transactions by which title or possession, or both, of tangible personal property, is or is to be transferred, or a license to use or consume tangible personal property is or is to be granted;

(2) All transactions by which lodging by a hotel is or is to be furnished to transient guests;

(3) All transactions by which:

(a) An item of tangible personal property is or is to be repaired, except property, the purchase of which would be exempt from the tax imposed by section 5739.02 of the Revised Code;

(b) An item of tangible personal property is or is to be installed, except property, the purchase of which would be exempt from the tax imposed by section 5739.02 of the Revised Code or property that is or is to be incorporated into and will become a part of a production, transmission, transportation, or distribution system for the delivery of a public utility service;

(c) The service of washing, cleaning, waxing, polishing, or painting a motor vehicle is or is to be furnished;

(d) Industrial laundry cleaning services are or are to be provided;

(e) Automatic data processing, computer services, or electronic information services are or are to be provided for use in business when the true object of the transaction is the receipt by the consumer of automatic

data processing, computer services, or electronic information services rather than the receipt of personal or professional services to which automatic data processing, computer services, or electronic information services are incidental or supplemental. Notwithstanding any other provision of this chapter, such transactions that occur between members of an affiliated group are not sales. An affiliated group means two or more persons related in such a way that one person owns or controls the business operation of another member of the group. In the case of corporations with stock, one corporation owns or controls another if it owns more than fifty per cent of the other corporation's common stock with voting rights.

(f) Telecommunications service is provided that originates or terminates in this state and is charged in the records of the telecommunications service vendor to the consumer's telephone number or account in this state, or that both originates and terminates in this state; but does not include transactions by which telecommunications service is paid for by using a prepaid authorization number or prepaid telephone calling card, or by which local telecommunications service is obtained from a coin-operated telephone and paid for by using coin;

(g) Landscaping and lawn care service is or is to be provided;

(h) Private investigation and security service is or is to be provided;

(i) Information services or tangible personal property is provided or ordered by means of a nine hundred telephone call;

(j) Building maintenance and janitorial service is or is to be provided;

(k) Employment service is or is to be provided;

(l) Employment placement service is or is to be provided;

(m) Exterminating service is or is to be provided;

(n) Physical fitness facility service is or is to be provided;

(o) Recreation and sports club service is or is to be provided.

(4) All transactions by which printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter are or are to be furnished or transferred;

(5) The production or fabrication of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the production of fabrication work; and include the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property. Except as provided in section 5739.03 of the Revised Code, a construction contract pursuant to which tangible personal property is or is to be incorporated into a structure or

improvement on and becoming a part of real property is not a sale of such tangible personal property. The construction contractor is the consumer of such tangible personal property, provided that the sale and installation of carpeting, the sale and installation of agricultural land tile, the sale and erection or installation of portable grain bins, or the provision of landscaping and lawn care service and the transfer of property as part of such service is never a construction contract. The transfer of copyrighted motion picture films for exhibition purposes is not a sale, except such films as are used solely for advertising purposes. Other than as provided in this section, "sale" and "selling" do not include transfers of interest in leased property where the original lessee and the terms of the original lease agreement remain unchanged, or professional, insurance, or personal service transactions that involve the transfer of tangible personal property as an inconsequential element, for which no separate charges are made.

As used in division (B)(5) of this section:

(a) "Agricultural land tile" means fired clay or concrete tile, or flexible or rigid perforated plastic pipe or tubing, incorporated or to be incorporated into a subsurface drainage system appurtenant to land used or to be used directly in production by farming, agriculture, horticulture, or floriculture. The term does not include such materials when they are or are to be incorporated into a drainage system appurtenant to a building or structure even if the building or structure is used or to be used in such production.

(b) "Portable grain bin" means a structure that is used or to be used by a person engaged in farming or agriculture to shelter the person's grain and that is designed to be disassembled without significant damage to its component parts.

(6) All transactions in which all of the shares of stock of a closely held corporation are transferred, if the corporation is not engaging in business and its entire assets consist of boats, planes, motor vehicles, or other tangible personal property operated primarily for the use and enjoyment of the shareholders;

(7) All transactions in which a warranty, maintenance or service contract, or similar agreement by which the vendor of the warranty, contract, or agreement agrees to repair or maintain the tangible personal property of the consumer is or is to be provided;

(8) All transactions by which a prepaid authorization number or a prepaid telephone calling card is or is to be transferred.

(C) "Vendor" means the person providing the service or by whom the transfer effected or license given by a sale is or is to be made or given and, for sales described in division (B)(3)(i) of this section, the

telecommunications service vendor that provides the nine hundred telephone service; if two or more persons are engaged in business at the same place of business under a single trade name in which all collections on account of sales by each are made, such persons shall constitute a single vendor.

Physicians, dentists, hospitals, and veterinarians who are engaged in selling tangible personal property as received from others, such as eyeglasses, mouthwashes, dentifrices, or similar articles, are vendors. Veterinarians who are engaged in transferring to others for a consideration drugs, the dispensing of which does not require an order of a licensed veterinarian or physician under federal law, are vendors.

(D)(1) "Consumer" means the person for whom the service is provided, to whom the transfer effected or license given by a sale is or is to be made or given, to whom the service described in division (B)(3)(f) or (i) of this section is charged, or to whom the admission is granted.

(2) Physicians, dentists, hospitals, and blood banks operated by nonprofit institutions and persons licensed to practice veterinary medicine, surgery, and dentistry are consumers of all tangible personal property and services purchased by them in connection with the practice of medicine, dentistry, the rendition of hospital or blood bank service, or the practice of veterinary medicine, surgery, and dentistry. In addition to being consumers of drugs administered by them or by their assistants according to their direction, veterinarians also are consumers of drugs that under federal law may be dispensed only by or upon the order of a licensed veterinarian or physician, when transferred by them to others for a consideration to provide treatment to animals as directed by the veterinarian.

(3) A person who performs a facility management, or similar service contract for a contractee is a consumer of all tangible personal property and services purchased for use in connection with the performance of such contract, regardless of whether title to any such property vests in the contractee. The purchase of such property and services is not subject to the exception for resale under division (E)(1) of this section.

(4)(a) In the case of a person who purchases printed matter for the purpose of distributing it or having it distributed to the public or to a designated segment of the public, free of charge, that person is the consumer of that printed matter, and the purchase of that printed matter for that purpose is a sale.

(b) In the case of a person who produces, rather than purchases, printed matter for the purpose of distributing it or having it distributed to the public or to a designated segment of the public, free of charge, that person is the consumer of all tangible personal property and services purchased for use or

consumption in the production of that printed matter. That person is not entitled to claim exception under division (E)(8) of this section for any material incorporated into the printed matter or any equipment, supplies, or services primarily used to produce the printed matter.

(c) The distribution of printed matter to the public or to a designated segment of the public, free of charge, is not a sale to the members of the public to whom the printed matter is distributed or to any persons who purchase space in the printed matter for advertising or other purposes.

(5) A person who makes sales of any of the services listed in division (B)(3) of this section is the consumer of any tangible personal property used in performing the service. The purchase of that property is not subject to the resale exception under division (E)(1) of this section.

(E) "Retail sale" and "sales at retail" include all sales except those in which the purpose of the consumer is:

(1) To resell the thing transferred or benefit of the service provided, by a person engaging in business, in the form in which the same is, or is to be, received by the person;

(2) To incorporate the thing transferred as a material or a part, into tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining, or to use or consume the thing transferred directly in producing a product for sale by mining, including without limitation the extraction from the earth of all substances that are classed geologically as minerals, production of crude oil and natural gas, farming, agriculture, horticulture, or floriculture, and persons engaged in rendering farming, agricultural, horticultural, or floricultural services, and services in the exploration for, and production of, crude oil and natural gas, for others are deemed engaged directly in farming, agriculture, horticulture, and floriculture, or exploration for, and production of, crude oil and natural gas; directly in the rendition of a public utility service, except that the sales tax levied by section 5739.02 of the Revised Code shall be collected upon all meals, drinks, and food for human consumption sold upon Pullman and railroad coaches. This paragraph does not exempt or except from "retail sale" or "sales at retail" the sale of tangible personal property that is to be incorporated into a structure or improvement to real property.

(3) To hold the thing transferred as security for the performance of an obligation of the vendor;

(4) To use or consume the thing transferred in the process of reclamation as required by Chapters 1513. and 1514. of the Revised Code;

(5) To resell, hold, use, or consume the thing transferred as evidence of a contract of insurance;

- (6) To use or consume the thing directly in commercial fishing;
- (7) To incorporate the thing transferred as a material or a part into, or to use or consume the thing transferred directly in the production of, magazines distributed as controlled circulation publications;
- (8) To use or consume the thing transferred in the production and preparation in suitable condition for market and sale of printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter;
- (9) To use the thing transferred, as described in section 5739.011 of the Revised Code, primarily in a manufacturing operation to produce tangible personal property for sale;
- (10) To use the benefit of a warranty, maintenance or service contract, or similar agreement, as defined in division (B)(7) of this section, to repair or maintain tangible personal property, if all of the property that is the subject of the warranty, contract, or agreement would be exempt on its purchase from the tax imposed by section 5739.02 of the Revised Code;
- (11) To use the thing transferred as qualified research and development equipment;
- (12) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory in a warehouse, distribution center, or similar facility when the inventory is primarily distributed outside this state to retail stores of the person who owns or controls the warehouse, distribution center, or similar facility, to retail stores of an affiliated group of which that person is a member, or by means of direct marketing. Division (E)(12) of this section does not apply to motor vehicles registered for operation on the public highways. As used in division (E)(12) of this section, "affiliated group" has the same meaning as in division (B)(3)(e) of this section and "direct marketing" has the same meaning as in division (B)(37) of section 5739.02 of the Revised Code.
- (13) To use or consume the thing transferred to fulfill a contractual obligation incurred by a warrantor pursuant to a warranty provided as a part of the price of the tangible personal property sold or by a vendor of a warranty, maintenance or service contract, or similar agreement the provision of which is defined as a sale under division (B)(7) of this section;
- (14) To use or consume the thing transferred in the production of a newspaper for distribution to the public;
- (15) To use tangible personal property to perform a service listed in division (B)(3) of this section, if the property is or is to be permanently transferred to the consumer of the service as an integral part of the performance of the service.

As used in division (E) of this section, "thing" includes all transactions included in divisions (B)(3)(a), (b), and (e) of this section.

Sales conducted through a coin-operated device that activates vacuum equipment or equipment that dispenses water, whether or not in combination with soap or other cleaning agents or wax, to the consumer for the consumer's use on the premises in washing, cleaning, or waxing a motor vehicle, provided no other personal property or personal service is provided as part of the transaction, are not retail sales or sales at retail.

(F) "Business" includes any activity engaged in by any person with the object of gain, benefit, or advantage, either direct or indirect. "Business" does not include the activity of a person in managing and investing the person's own funds.

(G) "Engaging in business" means commencing, conducting, or continuing in business, and liquidating a business when the liquidator thereof holds itself out to the public as conducting such business. Making a casual sale is not engaging in business.

(H)(1) "Price," except as provided in divisions (H)(2) and (3) of this section, means the aggregate value in money of anything paid or delivered, or promised to be paid or delivered, in the complete performance of a retail sale, without any deduction on account of the cost of the property sold, cost of materials used, labor or service cost, interest, discount paid or allowed after the sale is consummated, or any other expense. If the retail sale consists of the rental or lease of tangible personal property, "price" means the aggregate value in money of anything paid or delivered, or promised to be paid or delivered, in the complete performance of the rental or lease, without any deduction for tax, interest, labor or service charge, damage liability waiver, termination or damage charge, discount paid or allowed after the lease is consummated, or any other expense. The Except as provided in division (H)(4) of this section, the sales tax shall be calculated and collected by the lessor on each payment made by the lessee. Price does not include the consideration received as a deposit refundable to the consumer upon return of a beverage container, the consideration received as a deposit on a carton or case that is used for such returnable containers, or the consideration received as a refundable security deposit for the use of tangible personal property to the extent that it actually is refunded, if the consideration for such refundable deposit is separately stated from the consideration received or to be received for the tangible personal property transferred in the retail sale. Such separation must appear in the sales agreement or on the initial invoice or initial billing rendered by the vendor to the consumer. Price is the amount received inclusive of the tax, provided

the vendor establishes to the satisfaction of the tax commissioner that the tax was added to the price. When the price includes both a charge for tangible personal property and a charge for providing a service and the sale of the property and the charge for the service are separately taxable, or have a separately determinable tax status, the price shall be separately stated for each such charge so the tax can be correctly computed and charged.

The tax collected by the vendor from the consumer under this chapter is not part of the price, but is a tax collection for the benefit of the state and of counties levying an additional sales tax pursuant to section 5739.021 or 5739.026 of the Revised Code and of transit authorities levying an additional sales tax pursuant to section 5739.023 of the Revised Code. Except for the discount authorized in section 5739.12 of the Revised Code, no person other than the state or such a county or transit authority shall derive any benefit from the collection or payment of such tax.

(2) In the case of a sale of any new motor vehicle by a new motor vehicle dealer, as defined in section 4517.01 of the Revised Code, in which another motor vehicle is accepted by the dealer as part of the consideration received, "price" has the same meaning as in division (H)(1) of this section, reduced by the credit afforded the consumer by the dealer for the motor vehicle received in trade.

(3) In the case of a sale of any watercraft or outboard motor by a watercraft dealer licensed in accordance with section 1547.543 of the Revised Code, in which another watercraft, watercraft and trailer, or outboard motor is accepted by the dealer as part of the consideration received, "price" has the same meaning as in division (H)(1) of this section, reduced by the credit afforded the consumer by the dealer for the watercraft, watercraft and trailer, or outboard motor received in trade. ~~As~~

(4) In the case of the lease of any motor vehicle designed by the manufacturer to carry a load of not more than one ton, watercraft, outboard motor, or aircraft, or the lease of any tangible personal property, other than motor vehicles designed by the manufacturer to carry a load of more than one ton, to be used by the lessee primarily for business purposes, the sales tax shall be collected by the vendor at the time the lease is consummated and shall be calculated by the vendor on the basis of the total amount to be paid by the lessee under the lease agreement. If the total amount of the consideration for the lease includes amounts that are not calculated at the time the lease is executed, the tax shall be calculated and collected by the vendor at the time such amounts are billed to the lessee. In the case of an open-end lease, the sales tax shall be calculated by the vendor on the basis of the total amount to be paid during the initial fixed term of the lease, and

then for each subsequent renewal period as it comes due.

As used in ~~division~~ divisions (H)(3) and (4) of this section, "motor vehicle" has the same meaning as in section 4501.01 of the Revised Code, and "watercraft" includes an outdrive unit attached to the watercraft.

(I) "Receipts" means the total amount of the prices of the sales of vendors, provided that cash discounts allowed and taken on sales at the time they are consummated are not included, minus any amount deducted as a bad debt pursuant to section 5739.121 of the Revised Code. "Receipts" does not include the sale price of property returned or services rejected by consumers when the full sale price and tax are refunded either in cash or by credit.

(J) "Place of business" means any location at which a person engages in business.

(K) "Premises" includes any real property or portion thereof upon which any person engages in selling tangible personal property at retail or making retail sales and also includes any real property or portion thereof designated for, or devoted to, use in conjunction with the business engaged in by such person.

(L) "Casual sale" means a sale of an item of tangible personal property that was obtained by the person making the sale, through purchase or otherwise, for the person's own use in this state and was previously subject to any state's taxing jurisdiction on its sale or use, and includes such items acquired for the seller's use that are sold by an auctioneer employed directly by the person for such purpose, provided the location of such sales is not the auctioneer's permanent place of business. As used in this division, "permanent place of business" includes any location where such auctioneer has conducted more than two auctions during the year.

(M) "Hotel" means every establishment kept, used, maintained, advertised, or held out to the public to be a place where sleeping accommodations are offered to guests, in which five or more rooms are used for the accommodation of such guests, whether the rooms are in one or several structures.

(N) "Transient guests" means persons occupying a room or rooms for sleeping accommodations for less than thirty consecutive days.

(O) "Making retail sales" means the effecting of transactions wherein one party is obligated to pay the price and the other party is obligated to provide a service or to transfer title to or possession of the item sold. "Making retail sales" does not include the preliminary acts of promoting or soliciting the retail sales, other than the distribution of printed matter which displays or describes and prices the item offered for sale, nor does it include

delivery of a predetermined quantity of tangible personal property or transportation of property or personnel to or from a place where a service is performed, regardless of whether the vendor is a delivery vendor.

(P) "Used directly in the rendition of a public utility service" means that property which is to be incorporated into and will become a part of the consumer's production, transmission, transportation, or distribution system and that retains its classification as tangible personal property after such incorporation; fuel or power used in the production, transmission, transportation, or distribution system; and tangible personal property used in the repair and maintenance of the production, transmission, transportation, or distribution system, including only such motor vehicles as are specially designed and equipped for such use. Tangible personal property and services used primarily in providing highway transportation for hire are not used in providing a public utility service as defined in this division.

(Q) "Refining" means removing or separating a desirable product from raw or contaminated materials by distillation or physical, mechanical, or chemical processes.

(R) "Assembly" and "assembling" mean attaching or fitting together parts to form a product, but do not include packaging a product.

(S) "Manufacturing operation" means a process in which materials are changed, converted, or transformed into a different state or form from which they previously existed and includes refining materials, assembling parts, and preparing raw materials and parts by mixing, measuring, blending, or otherwise committing such materials or parts to the manufacturing process. "Manufacturing operation" does not include packaging.

(T) "Fiscal officer" means, with respect to a regional transit authority, the secretary-treasurer thereof, and with respect to a county that is a transit authority, the fiscal officer of the county transit board if one is appointed pursuant to section 306.03 of the Revised Code or the county auditor if the board of county commissioners operates the county transit system.

(U) "Transit authority" means a regional transit authority created pursuant to section 306.31 of the Revised Code or a county in which a county transit system is created pursuant to section 306.01 of the Revised Code. For the purposes of this chapter, a transit authority must extend to at least the entire area of a single county. A transit authority that includes territory in more than one county must include all the area of the most populous county that is a part of such transit authority. County population shall be measured by the most recent census taken by the United States census bureau.

(V) "Legislative authority" means, with respect to a regional transit

authority, the board of trustees thereof, and with respect to a county that is a transit authority, the board of county commissioners.

(W) "Territory of the transit authority" means all of the area included within the territorial boundaries of a transit authority as they from time to time exist. Such territorial boundaries must at all times include all the area of a single county or all the area of the most populous county that is a part of such transit authority. County population shall be measured by the most recent census taken by the United States census bureau.

(X) "Providing a service" means providing or furnishing anything described in division (B)(3) of this section for consideration.

(Y)(1)(a) "Automatic data processing" means processing of others' data, including keypunching or similar data entry services together with verification thereof, or providing access to computer equipment for the purpose of processing data.

(b) "Computer services" means providing services consisting of specifying computer hardware configurations and evaluating technical processing characteristics, computer programming, and training of computer programmers and operators, provided in conjunction with and to support the sale, lease, or operation of taxable computer equipment or systems.

(c) "Electronic information services" means providing access to computer equipment by means of telecommunications equipment for the purpose of either of the following:

(i) Examining or acquiring data stored in or accessible to the computer equipment;

(ii) Placing data into the computer equipment to be retrieved by designated recipients with access to the computer equipment.

(d) "Automatic data processing, computer services, or electronic information services" shall not include personal or professional services.

(2) As used in divisions (B)(3)(e) and (Y)(1) of this section, "personal and professional services" means all services other than automatic data processing, computer services, or electronic information services, including but not limited to:

(a) Accounting and legal services such as advice on tax matters, asset management, budgetary matters, quality control, information security, and auditing and any other situation where the service provider receives data or information and studies, alters, analyzes, interprets, or adjusts such material;

(b) Analyzing business policies and procedures;

(c) Identifying management information needs;

(d) Feasibility studies, including economic and technical analysis of existing or potential computer hardware or software needs and alternatives;

(e) Designing policies, procedures, and custom software for collecting business information, and determining how data should be summarized, sequenced, formatted, processed, controlled, and reported so that it will be meaningful to management;

(f) Developing policies and procedures that document how business events and transactions are to be authorized, executed, and controlled;

(g) Testing of business procedures;

(h) Training personnel in business procedure applications;

(i) Providing credit information to users of such information by a consumer reporting agency, as defined in the "Fair Credit Reporting Act," 84 Stat. 1114, 1129 (1970), 15 U.S.C. 1681a(f), or as hereafter amended, including but not limited to gathering, organizing, analyzing, recording, and furnishing such information by any oral, written, graphic, or electronic medium;

(j) Providing debt collection services by any oral, written, graphic, or electronic means.

The services listed in divisions (Y)(2)(a) to (j) of this section are not automatic data processing or computer services.

(Z) "Highway transportation for hire" means the transportation of personal property belonging to others for consideration by any of the following:

(1) The holder of a permit or certificate issued by this state or the United States authorizing the holder to engage in transportation of personal property belonging to others for consideration over or on highways, roadways, streets, or any similar public thoroughfare;

(2) A person who engages in the transportation of personal property belonging to others for consideration over or on highways, roadways, streets, or any similar public thoroughfare but who could not have engaged in such transportation on December 11, 1985, unless the person was the holder of a permit or certificate of the types described in division (Z)(1) of this section;

(3) A person who leases a motor vehicle to and operates it for a person described by division (Z)(1) or (2) of this section.

(AA) "Telecommunications service" means the transmission of any interactive, two-way electromagnetic communications, including voice, image, data, and information, through the use of any medium such as wires, cables, microwaves, cellular radio, radio waves, light waves, or any combination of those or similar media. "Telecommunications service" includes message toll service even though the vendor provides the message toll service by means of wide area transmission type service or private

ommunications service purchased from another telecommunications service provider, but does not include any of the following:

(1) Sales of incoming or outgoing wide area transmission service or wide area transmission type service, including eight hundred or eight-hundred-type service, to the person contracting for the receipt of that service;

(2) Sales of private communications service to the person contracting for the receipt of that service that entitles the purchaser to exclusive or priority use of a communications channel or group of channels between exchanges;

(3) Sales of telecommunications service by companies subject to the excise tax imposed by Chapter 5727. of the Revised Code;

(4) Sales of telecommunications service to a provider of telecommunications service, including access services, for use in providing telecommunications service;

(5) Value-added nonvoice services in which computer processing applications are used to act on the form, content, code, or protocol of the information to be transmitted;

(6) Transmission of interactive video programming by a cable television system as defined in section 505.90 of the Revised Code.

(BB) "Industrial laundry cleaning services" means removing soil or dirt from or supplying towels, linens, or articles of clothing that belong to others and are used in a trade or business.

(CC) "Magazines distributed as controlled circulation publications" means magazines containing at least twenty-four pages, at least twenty-five per cent editorial content, issued at regular intervals four or more times a year, and circulated without charge to the recipient, provided that such magazines are not owned or controlled by individuals or business concerns which conduct such publications as an auxiliary to, and essentially for the advancement of the main business or calling of, those who own or control them.

(DD) "Landscaping and lawn care service" means the services of planting, seeding, sodding, removing, cutting, trimming, pruning, mulching, aerating, applying chemicals, watering, fertilizing, and providing similar services to establish, promote, or control the growth of trees, shrubs, flowers, grass, ground cover, and other flora, or otherwise maintaining a lawn or landscape grown or maintained by the owner for ornamentation or other nonagricultural purpose. However, "landscaping and lawn care service" does not include the providing of such services by a person who has less than five thousand dollars in sales of such services during the calendar

year.

(EE) "Private investigation and security service" means the performance of any activity for which the provider of such service is required to be licensed pursuant to Chapter 4749. of the Revised Code, or would be required to be so licensed in performing such services in this state, and also includes the services of conducting polygraph examinations and of monitoring or overseeing the activities on or in, or the condition of, the consumer's home, business, or other facility by means of electronic or similar monitoring devices. "Private investigation and security service" does not include special duty services provided by off-duty police officers, deputy sheriffs, and other peace officers regularly employed by the state or a political subdivision.

(FF) "Information services" means providing conversation, giving consultation or advice, playing or making a voice or other recording, making or keeping a record of the number of callers, and any other service provided to a consumer by means of a nine hundred telephone call, except when the nine hundred telephone call is the means by which the consumer makes a contribution to a recognized charity.

(GG) "Research and development" means designing, creating, or formulating new or enhanced products, equipment, or manufacturing processes, and conducting scientific or technological inquiry and experimentation in the physical sciences with the goal of increasing scientific knowledge which may reveal the bases for new or enhanced products, equipment, or manufacturing processes.

(HH) "Qualified research and development equipment" means capitalized tangible personal property, and leased personal property that would be capitalized if purchased, used by a person primarily to perform research and development. Tangible personal property primarily used in testing, as defined in division (A)(4) of section 5739.011 of the Revised Code, or used for recording or storing test results, is not qualified research and development equipment unless such property is primarily used by the consumer in testing the product, equipment, or manufacturing process being created, designed, or formulated by the consumer in the research and development activity or in recording or storing such test results.

(II) "Building maintenance and janitorial service" means cleaning the interior or exterior of a building and any tangible personal property located therein or thereon, including any services incidental to such cleaning for which no separate charge is made. However, "building maintenance and janitorial service" does not include the providing of such service by a person who has less than five thousand dollars in sales of such service during the

calendar year.

(JJ) "Employment service" means providing or supplying personnel, on a temporary or long-term basis, to perform work or labor under the supervision or control of another, when the personnel so supplied receive their wages, salary, or other compensation from the provider of the service. "Employment service" does not include:

(1) Acting as a contractor or subcontractor, where the personnel performing the work are not under the direct control of the purchaser.

(2) Medical and health care services.

(3) Supplying personnel to a purchaser pursuant to a contract of at least one year between the service provider and the purchaser that specifies that each employee covered under the contract is assigned to the purchaser on a permanent basis.

(4) Transactions between members of an affiliated group, as defined in division (B)(3)(e) of this section.

(KK) "Employment placement service" means locating or finding employment for a person or finding or locating an employee to fill an available position.

(LL) "Exterminating service" means eradicating or attempting to eradicate vermin infestations from a building or structure, or the area surrounding a building or structure, and includes activities to inspect, detect, or prevent vermin infestation of a building or structure.

(MM) "Physical fitness facility service" means all transactions by which a membership is granted, maintained, or renewed, including initiation fees, membership dues, renewal fees, monthly minimum fees, and other similar fees and dues, by a physical fitness facility such as an athletic club, health spa, or gymnasium, which entitles the member to use the facility for physical exercise.

(NN) "Recreation and sports club service" means all transactions by which a membership is granted, maintained, or renewed, including initiation fees, membership dues, renewal fees, monthly minimum fees, and other similar fees and dues, by a recreation and sports club, which entitles the member to use the facilities of the organization. "Recreation and sports club" means an organization that has ownership of, or controls or leases on a continuing, long-term basis, the facilities used by its members and includes an aviation club, gun or shooting club, yacht club, card club, swimming club, tennis club, golf club, country club, riding club, amateur sports club, or similar organization.

(OO) "Livestock" means farm animals commonly raised for food or food production, and includes but is not limited to cattle, sheep, goats,

swine, and poultry. "Livestock" does not include invertebrates, fish, amphibians, reptiles, horses, domestic pets, animals for use in laboratories or for exhibition, or other animals not commonly raised for food or food production.

(PP) "Livestock structure" means a building or structure used exclusively for the housing, raising, feeding, or sheltering of livestock, and includes feed storage or handling structures and structures for livestock waste handling.

(QQ) "Horticulture" means the growing, cultivation, and production of flowers, fruits, herbs, vegetables, sod, mushrooms, and nursery stock. As used in this division, "nursery stock" has the same meaning as in section 927.51 of the Revised Code.

(RR) "Horticulture structure" means a building or structure used exclusively for the commercial growing, raising, or overwintering of horticultural products, and includes the area used for stocking, storing, and packing horticultural products when done in conjunction with the production of those products.

(SS) "Newspaper" means an unbound publication bearing a title or name that is regularly published, at least as frequently as biweekly, and distributed from a fixed place of business to the public in a specific geographic area, and that contains a substantial amount of news matter of international, national, or local events of interest to the general public.

(TT) "Professional racing team" means a person that employs at least twenty full-time employees for the purpose of conducting a motor vehicle racing business for profit. The person must conduct the business with the purpose of racing one or more motor racing vehicles in at least ten competitive professional racing events each year that comprise all or part of a motor racing series sanctioned by one or more motor racing sanctioning organizations. A "motor racing vehicle" means a vehicle for which the chassis, engine, and parts are designed exclusively for motor racing, and does not include a stock or production model vehicle that may be modified for use in racing. For the purposes of this division:

(1) A "competitive professional racing event" is a motor vehicle racing event sanctioned by one or more motor racing sanctioning organizations, at which aggregate cash prizes in excess of eight hundred thousand dollars are awarded to the competitors.

(2) "Full-time employee" means an individual who is employed for consideration for thirty-five or more hours a week, or who renders any other standard of service generally accepted by custom or specified by contract as full-time employment.

(UU)(1) "Prepaid authorization number" means a numeric or alphanumeric combination that represents a prepaid account that can be used by the account holder solely to obtain telecommunications service, and includes any renewals or increases in the prepaid account.

(2) "Prepaid telephone calling card" means a tangible item that contains a prepaid authorization number that can be used solely to obtain telecommunications service, and includes any renewals or increases in the prepaid account.

(VV) "Lease" means any transfer for a consideration of the possession of and right to use, but not title to, tangible personal property for a fixed period of time greater than twenty-eight days or for an open-ended period of time with a minimum fixed period of more than twenty-eight days.

Sec. 5739.012. (A) As used in this section:

(1) "Sham transaction" means a transaction or series of transactions without economic substance because there is no business purpose or expectation of profit other than obtaining tax benefits.

(2) "Tax" includes only those taxes levied by or pursuant to Chapter 5739. of the Revised Code that are required to be calculated and collected as prescribed by division (H)(4) of section 5739.01 of the Revised Code.

(3) "Taxpayer" includes any person required to pay or to collect and remit tax.

(B)(1) The tax commissioner may disregard any sham transaction and ascertain a taxpayer's liability for tax without the sham transaction.

(2) A lease with a renewal clause and a termination penalty or similar provision that applies if the renewal clause is not exercised is presumed to be a sham transaction. In such a case, the tax shall be calculated and paid on the basis of the entire length of the lease period, including any renewal periods, until the termination penalty or similar provision no longer applies. The taxpayer shall bear the burden of establishing, by a preponderance of the evidence, that the transaction or series of transactions is not a sham transaction.

(C) The tax commissioner may prescribe rules to administer this section.

Sec. 5741.01. As used in this chapter:

(A) "Person" includes individuals, receivers, assignees, trustees in bankruptcy, estates, firms, partnerships, associations, joint-stock companies, joint ventures, clubs, societies, corporations, business trusts, governments, and combinations of individuals of any form.

(B) "Storage" means and includes any keeping or retention in this state for use or other consumption in this state.

(C) "Use" means and includes the exercise of any right or power incidental to the ownership of the thing used. A thing is also "used" in this state if its consumer gives or otherwise distributes it, without charge, to recipients in this state.

(D) "Purchase" means acquired or received for a consideration, whether such acquisition or receipt was effected by a transfer of title, or of possession, or of both, or a license to use or consume; whether such transfer was absolute or conditional, and by whatever means the transfer was effected; and whether the consideration was money, credit, barter, or exchange. Purchase includes production, even though the article produced was used, stored, or consumed by the producer. The transfer of copyrighted motion picture films for exhibition purposes is not a purchase, except such films as are used solely for advertising purposes.

(E) "Seller" means the person from whom a purchase is made, and includes every person engaged in this state or elsewhere in the business of selling tangible personal property or providing a service for storage, use, or other consumption or benefit in this state; and when, in the opinion of the tax commissioner, it is necessary for the efficient administration of this chapter, to regard any salesman, representative, peddler, or canvasser as the agent of a dealer, distributor, supervisor, or employer under whom ~~he~~ the person operates, or from whom ~~he~~ the person obtains tangible personal property, sold by ~~him~~ the person for storage, use, or other consumption in this state, irrespective of whether or not ~~he~~ the person is making such sales on ~~his~~ the person's own behalf, or on behalf of such dealer, distributor, supervisor, or employer, the commissioner may regard ~~him~~ the person as such agent, and may regard such dealer, distributor, supervisor, or employer as the seller. "Seller" does not include any person to the extent the person provides a communications medium, such as, but not limited to, newspapers, magazines, radio, television, or cable television, by means of which sellers solicit purchases of their goods or services.

(F) "Consumer" means any person who has purchased tangible personal property or has been provided a service for storage, use, or other consumption or benefit in this state. "Consumer" does not include a person who receives, without charge, tangible personal property or a service.

A person who performs a facility management or similar service contract for a contractee is a consumer of all tangible personal property and services purchased for use in connection with the performance of such contract, regardless of whether title to any such property vests in the contractee. The purchase of such property and services is not subject to the exception for resale under division (E)(1) of section 5739.01 of the Revised

Code.

(G)(1) "Price," except in the case of watercraft, outboard motors, or new motor vehicles, means the aggregate value in money of anything paid or delivered, or promised to be paid or delivered, by a consumer to a seller in the complete performance of the transaction by which tangible personal property has been purchased or a service has been provided for storage, use, or other consumption or benefit in this state, without any deduction or exclusion on account of the cost of the property sold, cost of materials used, labor or service cost, interest, discount paid or allowed after the sale is consummated, or any other expense. If the transaction consists of the rental or lease of tangible personal property, "price" means the aggregate value in money of anything paid or delivered, or promised to be paid or delivered by the lessee to the lessor, in the complete performance of the rental or lease, without any deduction or exclusion of tax, interest, labor or service charge, damage liability waiver, termination or damage charge, discount paid or allowed after the lease is consummated, or any other expense. The Except as provided in division (G)(6) of this section, the tax shall be calculated and collected by the lessor on each payment made by the lessee. If a consumer produces the tangible personal property used by ~~him~~ the consumer, the price is the produced cost of such tangible personal property. The tax collected by the seller from the consumer under such sections is not a part of the price, but is a tax collection for the benefit of the state, and of counties levying an additional use tax pursuant to section 5741.021 or 5741.023 of the Revised Code and of transit authorities levying an additional use tax pursuant to section 5741.022 of the Revised Code and, except for the discount authorized under section 5741.12 of the Revised Code, no person other than the state or such a county or transit authority shall derive any benefit from the collection or payment of such tax.

(2) In the case of watercraft, outboard motors, or new motor vehicles, "price" has the same meaning as in division (H) of section 5739.01 of the Revised Code.

(3) In the case of a nonresident business consumer that purchases and uses tangible personal property outside this state and subsequently temporarily stores, uses, or otherwise consumes such tangible personal property in the conduct of business in this state, the consumer or the tax commissioner may determine the price based on the value of the temporary storage, use, or other consumption, in lieu of determining the price pursuant to division (G)(1) of this section. A price determination made by the consumer is subject to review and redetermination by the commissioner.

(4) In the case of tangible personal property held in this state as

inventory for sale or lease, and that is temporarily stored, used, or otherwise consumed in a taxable manner, the price is the value of the temporary use. A price determination made by the consumer is subject to review and redetermination by the commissioner.

(5) In the case of tangible personal property originally purchased and used by the consumer outside this state, and that becomes permanently stored, used, or otherwise consumed in this state more than six months after its acquisition by the consumer, the consumer or the tax commissioner may determine the price based on the current value of such tangible personal property, in lieu of determining the price pursuant to division (G)(1) of this section. A price determination made by the consumer is subject to review and redetermination by the commissioner.

(6) In the case of the purchase or lease of any motor vehicle designed by the manufacturer to carry a load of not more than one ton, watercraft, outboard motor, or aircraft, or the lease of any tangible personal property, other than motor vehicles designed by the manufacturer to carry a load of more than one ton, to be used by the lessee primarily for business purposes, the tax shall be collected by the vendor at the time the lease is consummated and calculated by the vendor on the basis of the total amount to be paid by the lessee under the lease agreement. If the total amount of the consideration for the lease includes amounts that are not calculated at the time the lease is executed, the tax shall be calculated and collected by the vendor at the time such amounts are billed to the lessee. In the case of an open-end lease, the tax shall be calculated by the vendor on the basis of the total amount to be paid during the initial fixed term of the lease, and then for each subsequent renewal period as it comes due. As used in division (G)(6) of this section only, "motor vehicle" has the same meaning as in section 4501.01 of the Revised Code.

(H) "Nexus with this state" means that the seller engages in continuous and widespread solicitation of purchases from residents of this state or otherwise purposefully directs its business activities at residents of this state.

(I) "Substantial nexus with this state" means that the seller has sufficient contact with this state, in accordance with Section 8 of Article I of the Constitution of the United States, to allow the state to require the seller to collect and remit use tax on sales of tangible personal property or services made to consumers in this state. "Substantial nexus with this state" exists when the seller does any of the following:

(1) Maintains a place of business within this state, whether operated by employees or agents of the seller, by a member of an affiliated group, as described in division (B)(3)(e) of section 5739.01 of the Revised Code, of

which the seller is a member, or by a franchisee using a trade name of the seller;

(2) Regularly has employees, agents, representatives, solicitors, installers, repairmen, salesmen, or other individuals in this state for the purpose of conducting the business of the seller;

(3) Uses a person in this state for the purpose of receiving or processing orders of the seller's goods or services;

(4) Makes regular deliveries of tangible personal property into this state by means other than common carrier;

(5) Has membership in an affiliated group, as described in division (B)(3)(e) of section 5739.01 of the Revised Code, at least one other member of which has substantial nexus with this state;

(6) Owns tangible personal property that is rented or leased to a consumer in this state, or offers tangible personal property, on approval, to consumers in this state;

(7) Is registered with the secretary of state to do business in this state or is registered or licensed by any state agency, board, or commission to transact business in this state or to make sales to persons in this state;

(8) Has any other contact with this state that would allow this state to require the seller to collect and remit use tax under Section 8 of Article I of the Constitution of the United States.

(J) "Fiscal officer" means, with respect to a regional transit authority, the secretary-treasurer thereof, and with respect to a county which is a transit authority, the fiscal officer of the county transit board appointed pursuant to section 306.03 of the Revised Code or, if the board of county commissioners operates the county transit system, the county auditor.

(K) "Territory of the transit authority" means all of the area included within the territorial boundaries of a transit authority as they from time to time exist. Such territorial boundaries must at all times include all the area of a single county or all the area of the most populous county which is a part of such transit authority. County population shall be measured by the most recent census taken by the United States census bureau.

(L) "Transit authority" means a regional transit authority created pursuant to section 306.31 of the Revised Code or a county in which a county transit system is created pursuant to section 306.01 of the Revised Code. For the purposes of this chapter, a transit authority must extend to at least the entire area of a single county. A transit authority which includes territory in more than one county must include all the area of the most populous county which is a part of such transit authority. County population shall be measured by the most recent census taken by the United States

census bureau.

(M) "Providing a service" has the same meaning as in division (X) of section 5739.01 of the Revised Code.

(N) "Other consumption" includes receiving the benefits of a service.

(O) "Lease" means any transfer for a consideration of the possession of and right to use, but not title to, tangible personal property for a fixed period of time greater than twenty-eight days or for an open-ended period of time with a minimum fixed period of more than twenty-eight days.

Sec. 5741.011. (A) As used in this section:

(1) "Sham transaction" has the same meaning as in section 5739.012 of the Revised Code.

(2) "Tax" includes only those taxes levied by or pursuant to Chapter 5741. of the Revised Code that are required to be calculated and collected as prescribed by division (G)(6) of section 5741.01 of the Revised Code.

(3) "Taxpayer" includes any person required to pay or to collect and remit tax.

(B)(1) The tax commissioner may disregard any sham transaction and ascertain a taxpayer's liability for tax without the sham transaction.

(2) A lease with a renewal clause and a termination penalty or similar provision that applies if the renewal clause is not exercised is presumed to be a sham transaction. In such a case, the tax shall be calculated and paid on the basis of the entire length of the lease period, including any renewal periods, until the termination penalty or similar provision no longer applies. The taxpayer shall bear the burden of establishing, by a preponderance of the evidence, that the transaction or series of transactions is not a sham transaction.

(C) The tax commissioner may prescribe rules to administer this section.

Sec. 5743.05. All stamps provided for by section 5743.03 of the Revised Code, when procured by the tax commissioner, shall be immediately delivered to the treasurer of state, who shall execute a receipt therefor showing the number and aggregate face value of each denomination received by the treasurer of state and any other information that the commissioner requires to enforce the collection and distribution of all taxes imposed under section 5743.024 or 5743.026 of the Revised Code, and deliver the receipt to the commissioner. The treasurer of state shall sell the stamps and, on the fifth day of each month, make a report showing all sales made during the preceding month, with the names of purchasers, the number of each denomination, the aggregate face value purchased by each, and any other information as the commissioner requires to enforce the collection and

distribution of all taxes imposed under section 5743.024 of the Revised Code, and deliver it to the commissioner. The treasurer of state shall be accountable for all stamps received and unsold. The stamps shall be sold and accounted for at their face value, except the commissioner shall, by rule certified to the treasurer of state, authorize the sale of stamps and meter impressions to wholesale or retail dealers in this state, or to wholesale dealers outside this state, at a discount of not less than ~~three one~~ and ~~six tenths~~ eight-tenths per cent or more than ten per cent of their face value, as a commission for affixing and canceling the stamps or meter impressions.

The tax commissioner, by rule certified to the treasurer of state, shall authorize the delivery of stamps and meter impressions to wholesale and retail dealers in this state and to wholesale dealers outside this state on credit when the purchaser files with the commissioner a bond to the state in the amount and in the form prescribed by the commissioner, and with surety to the satisfaction of the treasurer of state, conditioned on payment to the treasurer of state within thirty days for stamps or meter impressions delivered within that time. The tax commissioner shall limit delivery of stamps and meter impressions on credit to the period running from the first day of July of the fiscal year until the first day of the following May. Any discount allowed as a commission for affixing and canceling stamps or meter impressions shall be allowed with respect to sales of stamps and meter impressions on credit.

The treasurer of state shall redeem and pay for any destroyed, unused, or spoiled tax stamps and any unused meter impressions at their net value, and he shall refund to wholesale dealers the net amount of state and county taxes paid erroneously or paid on cigarettes which have been sold in interstate or foreign commerce or which have become unsalable, and the net amount of county taxes that were paid on cigarettes that have been sold at retail or for retail sale outside a taxing county. An application for a refund of tax shall be filed with the tax commissioner, on the form prescribed by the commissioner for that purpose, within three years from the date the tax stamps are destroyed or spoiled, from the date of the erroneous payment, or from the date that cigarettes on which taxes have been paid have been sold in interstate or foreign commerce or have become unsalable. On the filing of the application the commissioner shall determine the amount of refund due payable from receipts of the state tax, and, if applicable, payable from receipts of a county tax and certify such amounts to the director of budget and management and treasurer of state for payment from the tax refund fund created by section 5703.052 of the Revised Code. When a refund is granted for payment of an illegal or erroneous assessment issued by the department,

the refund shall include interest on the amount of the refund from the date of the overpayment. The interest shall be computed at the rate per annum prescribed by section 5703.47 of the Revised Code.

Sec. 5747.058. (A) A refundable income tax credit granted by the tax credit authority under section 122.17 of the Revised Code may be claimed under this chapter, in the order required under section 5747.98 of the Revised Code. For purposes of making tax payments under this chapter, taxes equal to the amount of the refundable credit shall be considered to be paid to this state on the first day of the taxable year. The refundable credit shall not be claimed for any taxable years ending with or following the calendar year in which a relocation of employment positions occurs in violation of an agreement entered into under section 122.171 of the Revised Code.

(B) A nonrefundable income tax credit granted by the tax credit authority under section 122.171 of the Revised Code may be claimed under this chapter, in the order required under section 5747.98 of the Revised Code.

Sec. 5747.13. (A) If any employer collects the tax imposed by section 5747.02 or under Chapter 5748. of the Revised Code and fails to remit the tax as required by law, or fails to collect the tax, the employer is personally liable for any amount collected which the employer fails to remit, or any amount which the employer fails to collect. If any taxpayer fails to file a return or fails to pay the tax imposed by section 5747.02 or under Chapter 5748. of the Revised Code, the taxpayer is personally liable for the amount of the tax.

If any employer, taxpayer, or qualifying entity required to file a return under this chapter fails to file the return within the time prescribed, files an incorrect return, fails to remit the full amount of the taxes due for the period covered by the return, or fails to remit any additional tax due as a result of a reduction in the amount of the credit allowed under division (B) of section 5747.05 of the Revised Code together with interest on the additional tax within the time prescribed by that division, the tax commissioner may make an assessment against any person liable for any deficiency for the period for which the return is or taxes are due, based upon any information in the commissioner's possession.

An assessment issued against either the employer or the taxpayer pursuant to this section shall not be considered an election of remedies or a bar to an assessment against the other for failure to report or pay the same tax. No assessment shall be issued against any person if the tax actually has been paid by another.

No assessment shall be made or issued against an employer, taxpayer, or qualifying entity more than four years after the final date the return subject to assessment was required to be filed or the date the return was filed, whichever is later. However, the commissioner may assess any balance due as the result of a reduction in the credit allowed under division (B) of section 5747.05 of the Revised Code, including applicable penalty and interest, within four years of the date on which the taxpayer reports a change in either the portion of the taxpayer's adjusted gross income subjected to an income tax or tax measured by income in another state or the District of Columbia or the amount of liability for an income tax or tax measured by income to another state or the District of Columbia, as required by division (B)(3) of section 5747.05 of the Revised Code. Such time limits may be extended if both the employer, taxpayer, or qualifying entity and the commissioner consent in writing to the extension or if an agreement waiving or extending the time limits has been entered into pursuant to section 122.171 of the Revised Code. Any such extension shall extend the four-year time limit in division (B) of section 5747.11 of the Revised Code for the same period of time. There shall be no bar or limit to an assessment against an employer for taxes withheld from employees and not remitted to the state, against an employer, taxpayer, or qualifying entity that fails to file a return subject to assessment as required by this chapter, or against an employer, taxpayer, or qualifying entity that files a fraudulent return.

The commissioner shall give the party assessed written notice of the assessment as provided in section 5703.37 of the Revised Code.

(B) Unless the party to whom the notice of assessment is directed files with the commissioner within sixty days after service of the notice of assessment, either personally or by certified mail, a petition for reassessment in writing, signed by the party assessed, or by the party's authorized agent having knowledge of the facts and makes payment of the portion of the assessment required by division (E) of this section, the assessment shall become final, and the amount of the assessment shall be due and payable from the party assessed to the commissioner with remittance made payable to the treasurer of state. The petition shall indicate the objections of the party assessed, but additional objections may be raised in writing if received prior to the date shown on the final determination by the commissioner.

Unless the petitioner waives a hearing, the commissioner shall assign a time and place for the hearing on the petition and notify the petitioner of the time and place of the hearing by personal service or certified mail, but the commissioner may continue the hearing from time to time if necessary.

The commissioner may make such correction to an assessment as the

commissioner finds proper. The commissioner shall serve a copy of a final determination on the petitioner by personal service or certified mail, and the commissioner's decision in the matter shall be final, subject to appeal as provided in section 5717.02 of the Revised Code. Only objections decided on the merits by the board of tax appeals or a court shall be given collateral estoppel or res judicata effect in considering an application for refund of amounts paid pursuant to the assessment.

(C) After an assessment becomes final, if any portion of the assessment remains unpaid, including accrued interest, a certified copy of the commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the employer's, taxpayer's, or qualifying entity's place of business is located or the county in which the party assessed resides. If the party assessed is not a resident of this state, the certified copy of the entry may be filed in the office of the clerk of the court of common pleas of Franklin county.

Immediately upon the filing of the entry, the clerk shall enter a judgment against the party assessed in the amount shown on the entry. The judgment shall be filed by the clerk in one of two loose-leaf books, one entitled "special judgments for state and school district income taxes," and the other entitled "special judgments for qualifying entity taxes." The judgment shall have the same effect as other judgments. Execution shall issue upon the judgment upon the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.

The portion of the assessment not paid within sixty days after the assessment was issued shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the tax commissioner issues the assessment until it is paid. Interest shall be paid in the same manner as the tax and may be collected by the issuance of an assessment under this section.

(D) All money collected under this section shall be considered as revenue arising from the taxes imposed by this chapter or Chapter 5733. or 5748. of the Revised Code, as appropriate.

(E) The portion of an assessment which must be paid upon the filing of a petition for reassessment shall be as follows:

(1) If the sole item objected to is the assessed penalty or interest, payment of the assessment, including interest but not penalty, is required;

(2) If the taxpayer or qualifying entity that is assessed failed to file, prior to the date of issuance of the assessment, the annual return or report required by section 5747.08 or 5747.42 of the Revised Code, any amended

return or amended report required by section 5747.10 or 5747.45 of the Revised Code for the taxable year at issue, or any report required by division (B) of section 5747.05 of the Revised Code to indicate a reduction in the amount of the credit provided under that division, payment of the assessment, including interest but not penalty, is required, except as otherwise provided under division (E)(6) or (7) of this section;

(3) If the employer assessed had not filed, prior to the date of issuance of the assessment, the annual return required by division (E)(2) of section 5747.07 of the Revised Code covering the period at issue, payment of the assessment, including interest but not penalty, is required;

(4) If the taxpayer or qualifying entity that is assessed filed, prior to the date of issuance of the assessment, the annual return or report required by section 5747.08 or 5747.42 of the Revised Code, all amended returns or reports required by section 5747.10 or 5747.45 of the Revised Code for the taxable year at issue, and all reports required by division (B) of section 5747.05 of the Revised Code to indicate a reduction in the amount of the credit provided under that division, and a balance of the taxes shown due on the returns or reports as computed on the returns or reports remains unpaid, payment of only that portion of the assessment representing the unpaid balance of tax and interest is required;

(5) If the employer assessed filed, prior to the date of issuance of the assessment, the annual return required by division (E)(2) of section 5747.07 of the Revised Code covering the period at issue, and a balance of the taxes shown due on the return as computed on the return remains unpaid, payment of only that portion of the assessment representing the unpaid balance of tax and interest is required;

(6) In the case of a party assessed as a qualifying entity subject to the tax levied under section 5733.41 or 5747.41 of the Revised Code, if the party does not dispute that it is a qualifying entity subject to that tax but claims the protections of section 101 of Public Law 86-272, 73 Stat. 555, 15 U.S.C.A. 381, as amended, no payment is required;

(7) In the case of a party assessed as a qualifying entity subject to the tax levied under section 5733.41 or 5747.41 of the Revised Code, if the party does dispute that it is a qualifying entity subject to that tax, no payment is required;

(8) If none of the conditions specified in divisions (E)(1) to (7) of this section apply, no payment is required.

(F) Notwithstanding the fact that a petition for reassessment is pending, the petitioner may pay all or a portion of the assessment that is the subject of the petition. The acceptance of a payment by the treasurer of state does not

prejudice any claim for refund upon final determination of the petition.

If upon final determination of the petition an error in the assessment is corrected by the commissioner, upon petition so filed or pursuant to a decision of the board of tax appeals or any court to which the determination or decision has been appealed, so that the amount due from the party assessed under the corrected assessment is less than the portion paid, there shall be issued to the petitioner or to the petitioner's assigns or legal representative a refund in the amount of the overpayment as provided by section 5747.11 of the Revised Code, with interest on that amount as provided by such section, subject to section 5747.12 of the Revised Code.

Sec. 5747.98. (A) To provide a uniform procedure for calculating the amount of tax due under section 5747.02 of the Revised Code, a taxpayer shall claim any credits to which the taxpayer is entitled in the following order:

(1) The retirement income credit under division (B) of section 5747.055 of the Revised Code;

(2) The senior citizen credit under division (C) of section 5747.05 of the Revised Code;

(3) The lump sum distribution credit under division (D) of section 5747.05 of the Revised Code;

(4) The dependent care credit under section 5747.054 of the Revised Code;

(5) The lump sum retirement income credit under division (C) of section 5747.055 of the Revised Code;

(6) The lump sum retirement income credit under division (D) of section 5747.055 of the Revised Code;

(7) The lump sum retirement income credit under division (E) of section 5747.055 of the Revised Code;

(8) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;

(9) The campaign contribution credit under section 5747.29 of the Revised Code;

(10) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;

(11) The joint filing credit under division (G) of section 5747.05 of the Revised Code;

(12) The nonresident credit under division (A) of section 5747.05 of the Revised Code;

(13) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;

(14) The credit for employers that enter into agreements with child day-care centers under section 5747.34 of the Revised Code;

(15) The credit for employers that reimburse employee child day-care expenses under section 5747.36 of the Revised Code;

(16) The credit for adoption of a minor child under section 5747.37 of the Revised Code;

(17) The credit for purchases of lights and reflectors under section 5747.38 of the Revised Code;

(18) The job retention credit under division (B) of section 5747.058 of the Revised Code;

(19) The credit for manufacturing investments under section 5747.051 of the Revised Code;

~~(19)~~(20) The credit for purchases of new manufacturing machinery and equipment under section 5747.26 or section 5747.261 of the Revised Code;

~~(20)~~(21) The second credit for purchases of new manufacturing machinery and equipment and the credit for using Ohio coal under section 5747.31 of the Revised Code;

~~(21)~~(22) The job training credit under section 5747.39 of the Revised Code;

~~(22)~~(23) The enterprise zone credit under section 5709.66 of the Revised Code;

~~(23)~~(24) The credit for the eligible costs associated with a voluntary action under section 5747.32 of the Revised Code;

~~(24)~~(25) The credit for employers that establish on-site child day-care centers under section 5747.35 of the Revised Code;

~~(25)~~(26) The credit for purchases of qualifying grape production property under section 5747.28 of the Revised Code;

~~(26)~~(27) The export sales credit under section 5747.057 of the Revised Code;

~~(27)~~(28) The credit for research and development and technology transfer investors under section 5747.33 of the Revised Code;

~~(28)~~(29) The enterprise zone credits under section 5709.65 of the Revised Code;

~~(29)~~(30) The refundable jobs creation credit under division (A) of section 5747.058 of the Revised Code;

~~(30)~~(31) The refundable credit for taxes paid by a qualifying entity granted under section 5747.059 of the Revised Code;

~~(31)~~(32) The refundable credits for taxes paid by a qualifying pass-through entity granted under division (J) of section 5747.08 of the Revised Code.

(B) For any credit, except the refundable credits enumerated in divisions (A)(29), (30), ~~and (31), and (32)~~ of this section and the credit granted under division (I) of section 5747.08 of the Revised Code, the amount of the credit for a taxable year shall not exceed the tax due after allowing for any other credit that precedes it in the order required under this section. Any excess amount of a particular credit may be carried forward if authorized under the section creating that credit. Nothing in this chapter shall be construed to allow a taxpayer to claim, directly or indirectly, a credit more than once for a taxable year.

Sec. 5923.05. (A)(1) Permanent public employees who are members of the Ohio organized militia or members of other reserve components of the armed forces of the United States, including the Ohio national guard, are entitled to leave of absence from their respective positions without loss of pay for the time they are performing service in the uniformed services, for periods of up to one month, for each calendar year in which they are performing service in the uniformed services.

(2) As used in this section:

(a) "Calendar year" means the year beginning on the first day of January and ending on the last day of December.

(b) "Month" means twenty-two eight-hour work days or one hundred seventy-six hours within one calendar year.

(c) "Permanent public employees" and "uniformed services" have the same meanings as in section 5903.01 of the Revised Code.

(d) "State agency" means any department, bureau, board, commission, office, or other organized body established by the constitution or laws of this state for the exercise of any function of state government, the general assembly, all legislative agencies, the supreme court, the court of claims, and the state-supported institutions of higher education.

(B) Except as otherwise provided in division (D) of this section, any permanent public employee who is employed by a political subdivision ~~and~~, who is entitled to the leave provided under division (A) of this section, and who is called or ordered to the uniformed services for longer than a month, for each calendar year in which the employee performed service in the uniformed services, because of an executive order issued by the president of the United States ~~or, because of an act of congress, or because of an order to perform duty issued by the governor pursuant to section 5919.29 of the Revised Code~~ is entitled, during the period designated in the order or act, to a leave of absence and to be paid, during each monthly pay period of that leave of absence, the lesser of the following:

(1) The difference between the permanent public employee's gross

monthly wage or salary as a permanent public employee and the sum of the permanent public employee's gross uniformed pay and allowances received that month;

(2) Five hundred dollars.

(C) Except as otherwise provided in division (D) of this section, any permanent public employee who is employed by a state agency ~~and~~, who is entitled to the leave provided under division (A) of this section, and who is called or ordered to the uniformed services for longer than a month, for each calendar year in which the employee performed service in the uniformed services, because of an executive order issued by the president of the United States ~~or, because of~~ an act of congress, or because of an order to perform duty issued by the governor pursuant to section 5919.29 of the Revised Code is entitled, during the period designated in the order or act, to a leave of absence and to be paid, during each monthly pay period of that leave of absence, the difference between the permanent public employee's gross monthly wage or salary as a permanent public employee and the sum of the permanent public employee's gross uniformed pay and allowances received that month.

(D) No permanent public employee shall receive payments under division (B) or (C) of this section if the sum of the permanent public employee's gross uniformed pay and allowances received in a pay period exceeds the employee's gross wage or salary as a permanent public employee for that period or if the permanent public employee is receiving pay under division (A) of this section.

(E) Any political subdivision of the state, as defined in section 2744.01 of the Revised Code, may elect to pay any of its permanent public employees who are entitled to the leave provided under division (A) of this section and who are called or ordered to the uniformed services for longer than one month, for each calendar year in which the employee performed service in the uniformed services, because of an executive order issued by the president or an act of congress, such payments, in addition to those payments required by division (B) of this section, as may be authorized by the legislative authority of the political subdivision.

(F) Each permanent public employee who is entitled to leave provided under division (A) of this section shall submit to the permanent public employee's appointing authority the published order authorizing the call or order to the uniformed services or a written statement from the appropriate military commander authorizing that service, prior to being credited with that leave.

(G) Any permanent public employee of a political subdivision whose

employment is governed by a collective bargaining agreement with provision for the performance of service in the uniformed services shall abide by the terms of that collective bargaining agreement with respect to the performance of that service, except that no collective bargaining agreement may afford fewer rights and benefits than are conferred under this section.

Sec. 5923.051. Notwithstanding sections 1751.54, 3923.381, and 3923.382 of the Revised Code, the state and any agency, authority, commission, or board of the state, at the request of any person who is employed by the state or any of those entities who is called or ordered to ~~active~~ duty as described in division ~~(B)~~(C) of section 5923.05 of the Revised Code, or at the request of the spouse or dependent of such a person, shall continue or reactivate the health, medical, hospital, dental, vision, and surgical benefits coverage of the person, whether provided by an insurance company, health insuring corporation, or other health plan or entity, for the duration of the time the person is on ~~active~~ duty as described in that division. The person, or the spouse or dependent of the person, who requests the continuation or reactivation of the coverage and the employing state or state entity are each liable for payment of the same costs for the coverage as if the person were not on a leave of absence.

SECTION 2. That existing sections 103.144, 103.145, 103.146, 122.15, 145.01, 149.07, 166.03, 183.02, 317.33, 742.01, 1309.528, 1333.11, 3307.01, 3309.01, 3313.37, 3313.375, 3318.31, 3353.07, 3353.11, 3770.02, 3770.03, 3770.06, 5111.34, 5111.872, 5123.043, 5123.046, 5123.048, 5123.049, 5123.0411, 5126.01, 5126.02, 5126.021, 5126.033, 5126.035, 5126.036, 5126.042, 5126.046, 5126.05, 5126.054, 5126.055, 5126.056, 5126.06, 5126.14, 5126.15, 5126.17, 5126.18, 5126.19, 5126.221, 5126.357, 5505.01, 5705.44, 5709.12, 5709.121, 5709.17, 5709.40, 5709.411, 5709.43, 5709.73, 5709.74, 5709.75, 5709.77, 5709.78, 5709.79, 5709.80, 5709.81, 5725.14, 5725.24, 5725.25, 5725.26, 5733.056, 5733.06, 5733.0610, 5733.09, 5733.11, 5733.98, 5739.01, 5741.01, 5743.05, 5747.058, 5747.13, 5747.98, 5923.05, 5923.051 and section 103.147 of the Revised Code are hereby repealed.

SECTION 3. On the recommendation of the Director of Mental Retardation and Developmental Disabilities, the Director of Job and Family Services may seek one or more Medicaid waivers pursuant to section 5111.87 of the Revised Code including a waiver under which home and

community-based services are provided in the form of family support services programs established by county boards of mental retardation and developmental disabilities under section 5126.11 of the Revised Code. Notwithstanding division (A) of section 5111.873 of the Revised Code, the Director of Job and Family Services is not required to adopt rules under that section by the effective date of the waiver under which home and community-based services are provided in the form of family support services programs.

SECTION 4. As used in this section, "Residential Facility Waiver transition" means the transition, due to the upcoming termination of the Residential Facility Waiver, of individuals who receive services under the Residential Facility Waiver to other home and community-based services as defined in section 5126.01 of the Revised Code.

Consistent with the Medicaid redesign plan that the Department of Job and Family Services submitted to the Centers for Medicaid and Medicare Services to comply with an audit conducted by the centers, the Department of Mental Retardation and Developmental Disabilities shall develop a plan to implement the Residential Facilities Waiver transition. The plan shall identify how the needs of the individuals to be transferred are to be met, including ways that the Residential Facility Waiver's service capacity can be reconfigured on a statewide, regional, or county specific basis. The plan shall also specify the date, which shall not be later than September 1, 2002, that the moratorium established under Section 5 of this act is to terminate. The Department of Mental Retardation and Developmental Disabilities shall complete the plan in time for the Executive Branch Committee on Medicaid Redesign and Expansion MRDD Services, created by Am. Sub. H.B. 94 of the 124th General Assembly, to review the plan and submit recommended changes to the Department by May 31, 2002. The Committee shall finish its review and submit suggested changes to the Department of Mental Retardation and Developmental Disabilities not later than that date. Not later than sixty days after the Committee submits suggested changes to the Department, the Department and the Department of Job and Family Services shall establish protocols for county boards of mental retardation and developmental disabilities and private and government entities under contract with a county board to provide services under the Residential Facility Waiver to follow in implementing the plan.

The Department of Mental Retardation and Developmental Disabilities shall identify costs associated with the plan developed under this section and sources of funding available to pay the costs.

Not later than February 8, 2002, each county board of mental retardation and developmental disabilities that has a contract with one or more private or government entities to provide services under the Residential Facility Waiver shall jointly develop a plan with the providers for the implementation of the Residential Facility Waiver transition as concerns individuals who reside in a residential facility with a license capacity of five or fewer beds. The boards and providers shall develop the plan in accordance with a protocol the Departments of Job and Family Services and Mental Retardation and Developmental Disabilities shall jointly establish.

SECTION 5. (A) Notwithstanding Chapter 5111. of the Revised Code, until the date specified in the plan that the Department of Mental Retardation and Developmental Disabilities develops under Section 4 of this act and except as provided in division (B) of this section, the number of intermediate care facility for the mentally retarded beds eligible for Medicaid payment shall not be higher than the number of such beds eligible for such payment on the effective date of this section.

(B) The Department of Job and Family Services may issue one or more waivers of division (A) of this section in the event that an emergency, as determined by the Department, exists. In determining whether to issue a waiver, the Department of Job and Family Services shall consider the recommendation of the Department of Mental Retardation and Developmental Disabilities.

SECTION 6. Notwithstanding Am. Sub. H.B. 94 of the 124th General Assembly, the Department of Mental Retardation and Developmental Disabilities shall not take action against a county board of mental retardation and developmental disabilities authorized by that act on the basis that the county board submitted the last component of the plan required by section 5126.054 of the Revised Code after November 1, 2001. The Department shall take action against the county board under division (B) of section 5126.056 of the Revised Code if the county board fails to submit that component to the Department by July 1, 2002.

SECTION 7. (A) The Joint Council on Mental Retardation and Developmental Disabilities created under section 101.37 of the Revised Code shall do all of the following regarding the tax equity program:

(1) Review documents submitted by the Ohio Department of Mental

Retardation and Developmental Disabilities, Ohio Superintendents of County Boards of Mental Retardation and Developmental Disabilities, Ohio Association of County Boards of Mental Retardation and Developmental Disabilities, and other entities to the Council regarding the issue of a property tax equalization program for adults only as provided by Am. Sub. H.B. 94 of the 124th General Assembly;

(2) Review the concept of Medicaid comparability of care, adult services expenditures within county boards of mental retardation and developmental disabilities, the concept of tax capacity and targeting property taxes to adult services, and the necessity to reduce the disparity in capability of county boards to provide adult services;

(3) Establish a reasonable methodology to provide tax equalization for adult services for county boards that are below the average on property tax yield.

(B) The Council shall prepare a report on its responsibilities under division (A) of this section. The report shall include the Council's findings and recommended actions. The Council shall submit the report to the Speaker of the House of Representatives, President of the Senate, and Governor not later than February 1, 2002.

SECTION 8. Notwithstanding sections 5126.16 to 5126.18 of the Revised Code and Section 75.02 of Am. Sub. H.B. 94 of the 124th General Assembly, the Department of Mental Retardation and Developmental Disabilities shall do both of the following:

(A) Use \$6,500,000 in fiscal year 2002 and \$13,000,000 in fiscal year 2003 of the appropriation item 322-501, County Boards Subsidies, in Section 75.02 of Am. Sub. H.B. 94 of the 124th General Assembly, to fund the tax equalization program in accordance with the law governing the program as revised by the General Assembly following the Joint Council on Mental Retardation and Developmental Disabilities' submission of the report required by this act regarding the tax equity program;

(B) Make payments under the tax equity program for fiscal year 2002 after the General Assembly revises the law governing the program following the Council's submission of the report rather than on or before September 30, 2001.

SECTION 9. (A) Section 307.6910 of the Revised Code is hereby repealed, effective July 1, 2007.

(B) The amendments made to sections 5709.40, 5709.411, 5709.43,

5709.73, 5709.74, 5709.75, 5709.77, 5709.78, 5709.79, 5709.80, and 5709.81 of the Revised Code by this act do not affect ordinances adopted by the legislative authority of a municipal corporation or resolutions adopted by a board of township trustees or a board of county commissioners under those sections prior to the effective date of this act.

SECTION 10. Not later than January 30, 2007, the Director of Development shall prepare and deliver an evaluation of the programs and laws contained in section 122.171, section 307.6910, division (C) of section 5709.40, division (C) of section 5709.73, division (B) of section 5709.78, and division (C) of section 5733.06, as it pertains to eligible corporations, of the Revised Code, as amended by this act; Section 41.15 of Am. Sub. H.B. 94 of the 124th General Assembly, as amended by this act, and Section 63.09 of Am. Sub. H.B. 94 of the 124th General Assembly, as amended by this act, as they pertain to the Rural Development Initiative Fund and the Appalachian Technology and Workforce Development program; and section 122.602 of the Revised Code, as enacted by this act. The report shall be delivered not later than January 30, 2007, to the President of the Senate, the Speaker of the House of Representatives, the chairpersons of the standing committees to which economic development legislation is generally referred, and the Governor. The evaluation shall cover the time period from the effective date of this section to December 31, 2006. The Director shall include a cumulative summary over the time period of data compiled from any annual or other reports required by the laws pertaining to the sections named above, and any additional information that the Director deems necessary. The Director shall analyze the effectiveness of the programs and provide a recommendation as to whether the programs should be continued, and whether any modifications are necessary.

The Department of Taxation shall provide the necessary data concerning the operation of division (C) of section 5733.06 of the Revised Code as it pertains to eligible corporations. The Department shall forward this information to the Director of Development for inclusion in the report. This information shall include the number of eligible corporations that have claimed an exemption, the amount of tax revenue foregone because of the exemptions, and any other information deemed necessary by the Department of Taxation or the Director of Development.

The Department of Taxation shall provide information to the Director of Development upon the Director's request concerning the administration of section 122.171 of the Revised Code as enacted by this act.

Not later than December 31, 2006, a board of county commissioners

that enters into an agreement under section 307.6910 of the Revised Code during the time period covered by the report shall provide the Director of Development with all necessary information, as determined by the Director, concerning the agreement.

SECTION 11. That Section 11 of Am. Sub. S.B. 50 of the 121st General Assembly be amended to read as follows:

" Sec. 11. The removal of former divisions (E) and (F) of section 3702.52 of the Revised Code by Sections 1 and 2 of ~~this act~~ Am. Sub. S.B. 50 of the 121st General Assembly does not release the holders of certificates of need issued under those divisions from complying with any conditions on which the granting of the certificates of need was based, including the requirement of former division (E)(6) of that section that the holders not enter into provider agreements under Chapter 5111. of the Revised Code and Title XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended, for at least ten years following initial licensure of the long-term care facilities for which the certificates were granted.

The repeal of section 3702.55 of the Revised Code by Section 2 of ~~this act~~ Am. Sub. S.B. 50 of the 121st General Assembly does not release the holders of certificates of need issued under that section from complying with any conditions on which the granting of the certificates of need was based, including other than the requirements requirement of division (A)(6) of that section that the holders not seek certification under Title XVIII ~~or XIX~~ of the "Social Security Act" for beds recategorized under the certificates; ~~and, That repeal also does not eliminate the requirement~~ that the Director of Health revoke the licensure of the beds under Chapter 3721. of the Revised Code if a person to which their ownership is transferred fails, as required by division (A)(6) of the repealed section, to file within ten days after the transfer a sworn statement not to seek ~~such~~ certification under Title XIX of the "Social Security Act" for beds recategorized under the certificates of need.

The repeal of section 3702.56 of the Revised Code by Section 2 of ~~this act~~ Am. Sub. S.B. 50 of the 121st General Assembly does not release the holders of certificates of need issued under that section from complying with any conditions on which the granting of the certificates of need was based."

SECTION 12. That existing Section 11 of Am. Sub. S.B. 50 of the 121st General Assembly is hereby repealed.

SECTION 13. That Section 3 of Am. Sub. H.B. 440 of the 121st General Assembly, as most recently amended by Am. Sub. H.B. 94 of the 124th General Assembly, be amended to read as follows:

" Sec. 3. Sections 122.23, 122.24, 122.25, 122.26, and 122.27 of the Revised Code are hereby repealed, effective July 1, ~~2003~~ 2007."

SECTION 14. That existing Section 3 of Am. Sub. H.B. 440 of the 121st General Assembly, as most recently amended by Am. Sub. H.B. 94 of the 124th General Assembly, is hereby repealed.

SECTION 15. That Section 5.02 of Sub. H.B. 73 of the 124th General Assembly be amended to read as follows:

" Sec. 5.02. ENFORCEMENT

State Highway Safety Fund Group

036	764-033	Minor Capital Projects	\$	2,531,302	\$	1,732,358
036	764-321	Operating Expense - Highway Patrol	\$	185,264,130	\$	195,245,402
<u>036</u>	<u>764-605</u>	<u>Motor Carrier Enforcement Expense</u>	<u>\$</u>	<u>189,309</u>	<u>\$</u>	<u>192,411</u>
83C	764-630	Contraband, Forfeiture, Other	\$	603,296	\$	622,894
83F	764-657	Law Enforcement Auto. Data System	\$	5,050,151	\$	5,277,569
83G	764-633	OMVI Fines	\$	781,051	\$	820,927
831	764-610	Patrol/Federal	\$	2,210,831	\$	2,336,609
831	764-659	Transportation Enforcement - Federal	\$	3,919,153	\$	4,087,361
837	764-602	Turnpike Policing	\$	8,803,786	\$	9,306,325
838	764-606	Patrol Reimbursement	\$	216,690	\$	222,108
840	764-607	State Fair Security	\$	1,306,015	\$	1,384,660
840	764-617	Security and Investigations	\$	4,484,313	\$	4,749,103
840	764-626	State Fairgrounds Police Force	\$	783,175	\$	829,631
840	764-667	Security Assessment	\$	152,324	\$	160,982
841	764-603	Salvage and Exchange - Highway Patrol	\$	1,243,025	\$	1,274,101
TOTAL HSF State Highway Safety Fund Group			\$	~~217,349,242~~	\$	~~228,050,930~~
				<u>217,538,551</u>		<u>228,242,441</u>

General Services Fund Group

4S2	764-660	MARCS Maintenance	\$	241,811	\$	227,222
TOTAL GSF General Services Fund Group			\$	241,811	\$	227,222
TOTAL ALL BUDGET FUND GROUPS - Enforcement			\$	~~217,591,053~~	\$	~~228,277,252~~
				<u>217,780,362</u>		<u>228,469,663</u>

COLLECTIVE BARGAINING INCREASES

Notwithstanding division (D) of section 127.14 and division (B) of section 131.35 of the Revised Code, except for the General Revenue Fund, the Controlling Board may, upon the request of either the Director of Budget and Management, or the Department of Public Safety with the approval of the Director of Budget and Management, increase appropriations for any fund, as necessary for the Department of Public Safety, to assist in paying the costs of increases in employee compensation that have occurred pursuant to collective bargaining agreements under Chapter 4117. of the Revised Code and, for exempt employees, under section 124.152 of the Revised Code.

PATROL REIMBURSEMENT FUND CASH TRANSFER

On the effective date of this amendment or as soon as possible thereafter, the Director of Budget and Management shall transfer \$551,150.59 in cash from the Patrol Reimbursement Fund (Fund 838) to the Turnpike Policing Fund (Fund 837). This transfer will correct an inaccurate deposit made at the end of fiscal year 2001.

On the effective date of this amendment or as soon as possible thereafter, the Director of Budget and Management shall transfer up to \$189,309 in cash in fiscal year 2002 and shall transfer up to \$192,411 in cash in fiscal year 2003 from the Financial Responsibility Compliance (Fund 835) to the State Highway Safety Fund (Fund 036).

SECTION 16. That existing Section 5.02 of Sub. H.B. 73 of the 124th General Assembly is hereby repealed.

SECTION 17. That Section 41 of Am. Sub. H.B. 94 of the 124th General Assembly, as amended by Am. Sub. H.B. 3 and Am. Sub. H.B. 299, both of the 124th General Assembly, be amended to read as follows:

" Sec. 41. DEV DEPARTMENT OF DEVELOPMENT

General Revenue Fund

GRF 195-100	Personal Services	\$	2,651,334	\$	2,920,941
GRF 195-200	Maintenance	\$	589,524	\$	601,314
GRF 195-300	Equipment	\$	108,161	\$	110,324
GRF 195-401	Thomas Edison Program	\$	20,000,000	\$	20,000,000
GRF 195-404	Small Business Development	\$	2,452,342	\$	2,529,843
GRF 195-405	Minority Business	\$	2,278,888	\$	2,297,314
	Development Division				
GRF 195-406	Transitional and Permanent Housing	\$	2,770,145	\$	2,770,155
GRF 195-407	Travel and Tourism	\$	6,345,500	\$	6,448,399
GRF 195-408	Coal Research Development	\$	562,551	\$	585,290

Am. Sub. H. B. No. 405

222

GRF 195-412	Business Development Grants	\$	8,033,935	\$	9,092,851
GRF 195-414	First Frontier Match	\$	490,000	\$	490,000
GRF 195-415	Regional Offices and Economic Development	\$	6,420,675	\$	6,735,253
GRF 195-416	Governor's Office of Appalachia	\$	5,466,954	\$	5,475,126
GRF 195-417	Urban/Rural Initiative	\$	980,000	\$	980,000
GRF 195-422	Technology Action	\$	14,000,000	\$	14,000,000
GRF 195-426	Clean Ohio Implementation	\$	448,000	\$	641,000
GRF 195-431	Community Development Corporation Grants	\$	2,530,860	\$	2,530,860
GRF 195-432	International Trade	\$	5,390,000	\$	5,551,700
GRF 195-434	Investment in Training Grants	\$	12,500,000	\$	12,500,000
GRF 195-436	Labor/Management Cooperation	\$	1,146,805	\$	1,152,752
GRF 195-440	Emergency Shelter Housing Grants	\$	2,768,313	\$	2,841,441
GRF 195-441	Low and Moderate Income Housing	\$	19,000,000	\$	19,000,000
GRF 195-497	CDBG Operating Match				
	Federal	\$	5,200,000	\$	6,500,000
	CDBG Operating Match Total	\$	6,408,56	\$	7,715,295
	State	\$	1,208,576	\$	1,215,295
GRF 195-498	State Energy Match	\$	153,558	\$	158,548
GRF 195-501	Appalachian Local Development Districts	\$	453,962	\$	453,962
GRF 195-502	Appalachian Regional Commission Dues	\$	219,912	\$	219,912
GRF 195-505	Utility Bill Credits	\$	7,350,000	\$	7,350,000
GRF 195-507	Travel and Tourism Grants	\$	1,250,000	\$	1,250,000
GRF 195-906	Coal Research and Development General Obligation Debt Service	\$	8,971,700	\$	9,420,300
TOTAL GRF General Revenue Fund					
	State	\$	136,541,695	\$	139,322,580
	Federal	\$	5,200,000	\$	6,500,000
	GRF TOTAL	\$	142,293,695	\$	146,681,580
General Services Fund Group					
135 195-605	Supportive Services	\$	9,038,988	\$	9,531,707
136 195-621	International Trade	\$	100,000	\$	24,915
685 195-636	General Reimbursements	\$	1,275,234	\$	1,323,021
TOTAL GSF General Services Fund Group					
		\$	10,414,222	\$	10,879,643
Federal Special Revenue Fund Group					
3K8 195-613	Community Development Block Grant	\$	65,149,441	\$	65,088,961
3K9 195-611	Home Energy Assistance Block Grant	\$	62,000,000	\$	62,000,000
3K9 195-614	HEAP Weatherization	\$	10,412,041	\$	10,412,041
3L0 195-612	Community Services Block Grant	\$	22,135,000	\$	22,135,000
3V1 195-601	HOME Program	\$	40,000,000	\$	40,000,000
3X3 195-619	TANF Housing Program	\$	5,200,000	\$	0

Am. Sub. H. B. No. 405

223

308	195-602	Appalachian Regional Commission	\$	350,000	\$	350,200
308	195-603	Housing and Urban Development	\$	5,000,000	\$	5,000,000
308	195-605	Federal Projects	\$	7,855,501	\$	7,855,501
308	195-609	Small Business Administration	\$	3,799,626	\$	3,799,626
308	195-618	Energy Federal Grants	\$	2,803,560	\$	2,803,560
335	195-610	Oil Overcharge	\$	8,500,000	\$	8,500,000
380	195-622	Housing Development Operating	\$	4,507,212	\$	4,696,198
TOTAL FED Federal Special Revenue Fund Group			\$	237,712,381	\$	232,641,087
			\$			

State Special Revenue Fund Group

4F2	195-639	State Special Projects	\$	1,052,762	\$	1,079,082
4H4	195-641	First Frontier	\$	600,000	\$	650,000
4S0	195-630	Enterprise Zone Operating	\$	211,900	\$	211,900
4S1	195-634	Job Creation Tax Credit Operating	\$	372,700	\$	375,800
4W1	195-646	Minority Business Enterprise Loan	\$	2,572,960	\$	2,580,597
444	195-607	Water and Sewer Commission Loans	\$	511,000	\$	523,775
445	195-617	Housing Finance Operating	\$	3,782,808	\$	3,968,184
450	195-624	Minority Business Bonding Program Administration	\$	13,232	\$	13,563
451	195-625	Economic Development Financing Operating	\$	2,062,451	\$	2,143,918
5M4	195-659	Universal Service	\$	160,000,000	\$	160,000,000
5M5	195-660	Energy Efficiency Revolving Loan	\$	12,000,000	\$	12,000,000
611	195-631	Water and Sewer Administration	\$	15,330	\$	15,713
617	195-654	Volume Cap Administration	\$	200,000	\$	200,000
646	195-638	Low and Moderate Income Housing Trust Fund	\$	21,539,552	\$	22,103,807
TOTAL SSR State Special Revenue Fund Group			\$	204,934,695	\$	205,866,339

Facilities Establishment Fund

037	195-615	Facilities Establishment	\$	56,701,684	\$	58,119,226
4Z6	195-647	Rural Industrial Park Loan	\$	5,000,000	\$	5,000,000
5D1	195-649	Port Authority Bond Reserves	\$	2,500,000	\$	2,500,000
5D2	195-650	Urban Redevelopment Loans	\$	10,000,000	\$	10,475,000
5H1	195-652	Family Farm Loan Guarantee	\$	2,246,375	\$	2,246,375
<u>5S8</u>	<u>195-627</u>	<u>Rural Development Initiative</u>	<u>\$</u>	<u>5,000,000</u>	<u>\$</u>	<u>5,000,000</u>
<u>5S9</u>	<u>195-628</u>	<u>Capital Access Loan Program</u>	<u>\$</u>	<u>3,000,000</u>	<u>\$</u>	<u>3,000,000</u>
TOTAL 037 Facilities Establishment Fund			\$	76,448,059	\$	78,340,601
				<u>84,448,059</u>		<u>86,340,601</u>

Coal Research/Development Fund

046	195-632	Coal Research and Development Fund	\$	12,847,178	\$	13,168,357
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TOTAL 046 Coal Research/ Development Fund	\$	12,847,178	\$	13,168,357
TOTAL ALL BUDGET FUND GROUPS	\$	~~678,898,230~~	\$	~~686,718,607~~
	\$	<u>684,650,230</u>		<u>688,218,607</u>
		<u>686,898,230</u>		"

SECTION 18. That existing Section 41 of Am. Sub. H.B. 94 of the 124th General Assembly, as amended by Am. Sub. H.B. 3 and Am. Sub. H.B. 299, both of the 124th General Assembly, is hereby repealed.

SECTION 19. That Sections 41.15, 45, 63.25, 74.01, 74.02, 94.11, 104, and 140 of Am. Sub. H.B. 94 of the 124th General Assembly be amended to read as follows:

" Sec. 41.15. FACILITIES ESTABLISHMENT FUND

The foregoing appropriation item 195-615, Facilities Establishment (Fund 037), shall be used for the purposes of the Facilities Establishment Fund under Chapter 166. of the Revised Code.

Notwithstanding Chapter 166. of the Revised Code, up to \$1,600,000 may be transferred each fiscal year from the Facilities Establishment Fund (Fund 037) to the Economic Development Financing Operating Fund (Fund 451). The transfer is subject to Controlling Board approval pursuant to division (B) of section 166.03 of the Revised Code.

Notwithstanding Chapter 166. of the Revised Code, up to \$3,800,000 may be transferred in each fiscal year of the biennium from the Facilities Establishment Fund (Fund 037) to the Minority Business Enterprise Loan Fund (Fund 4W1). The transfer is subject to Controlling Board approval pursuant to division (B) of section 166.03 of the Revised Code.

Notwithstanding Chapter 166. of the Revised Code, up to \$5,000,000 cash may be transferred during the biennium from the Facilities Establishment Fund (Fund 037) to the Port Authority Bond Reserves Fund (Fund 5D1) for use by any port authority in establishing or supplementing bond reserve funds for any bond issuance permitted under Chapter 4582. of the Revised Code. The Director of Development shall develop program guidelines for the transfer and release of funds, including, but not limited to, a provision that a port authority shall receive not more than \$2,000,000 total from the fund. The transfer and release of funds are subject to Controlling Board approval.

Notwithstanding Chapter 166. of the Revised Code, up to \$20,475,000 cash may be transferred during the biennium from the Facilities Establishment Fund (Fund 037) to the Urban Redevelopment Loans Fund

(Fund 5D2) for the purpose of removing barriers to urban core redevelopment. The Director of Development shall develop program guidelines for the transfer and release of funds, including, but not limited to, the completion of all appropriate environmental assessments before state assistance is committed to a project.

Notwithstanding Chapter 166. of the Revised Code, up to \$5,000,000 per fiscal year in cash may be transferred from the Facilities Establishment Fund (Fund 037) to the Rural Industrial Park Loan Fund (Fund 4Z6). The transfer is subject to Controlling Board approval pursuant to section 166.03 of the Revised Code.

FAMILY FARM LOAN PROGRAM

Notwithstanding Chapter 166. of the Revised Code, up to \$2,246,375 in each fiscal year shall be transferred from moneys in the Facilities Establishment Fund (Fund 037) to the Family Farm Loan Fund (Fund 5H1) in the Department of Development. These moneys shall be used for loan guarantees. The transfer is subject to Controlling Board approval.

Financial assistance from the Family Farm Loan Fund (Fund 5H1) shall be repaid to Fund 5H1. This fund is established in accordance with sections 166.031, 901.80, 901.81, 901.82, and 901.83 of the Revised Code.

When the Family Farm Loan Fund (Fund 5H1) ceases to exist, all outstanding balances, all loan repayments, and any other outstanding obligations shall revert to the Facilities Establishment Fund (Fund 037).

RURAL DEVELOPMENT INITIATIVE FUND

(A)(1) There is hereby created in the state treasury the Rural Development Initiative Fund (Fund 5S8). The fund shall receive moneys from the Facilities Establishment Fund. The Director of Development may make grants from the fund as specified in division (A)(2) of this section to eligible applicants in Appalachian counties and in rural counties in the state that are designated as distressed pursuant to section 122.25 of the Revised Code. Preference shall be given to eligible applicants located in Appalachian counties designated as distressed by the federal Appalachian Regional Commission. The fund shall cease to exist after June 30, 2007. All moneys remaining in the fund after that date shall revert to the Facilities Establishment Fund.

(2) The Director of Development shall make grants from the Rural Development Initiative Fund only to eligible applicants who also qualify for and receive funding under the Rural Industrial Park Loan Program as specified in sections 122.23 to 122.27 of the Revised Code. Eligible applicants shall use the grants for the purposes specified in section 122.24 of the Revised Code. All projects supported by grants from the fund are subject

to Chapter 4115. of the Revised Code as specified in division (E) of section 166.02 of the Revised Code. The Director shall develop program guidelines for the transfer and release of funds. The release of grant moneys to an eligible applicant is subject to Controlling Board approval.

(B) Notwithstanding Chapter 166. of the Revised Code, the Director of Budget and Management may transfer up to \$5,000,000 per fiscal year in cash on an as needed basis at the request of the Director of Development from the Facilities Establishment Fund (Fund 037) to the Rural Development Initiative Fund (Fund 5S8). The transfer is subject to Controlling Board approval pursuant to section 166.03 of the Revised Code.

CAPITAL ACCESS LOAN PROGRAM

The foregoing appropriation item 195-628, Capital Access Loan Program, shall be used for operating, program, and administrative expenses of the program. Funds for the Capital Access Loan Program shall be used to assist participating financial institutions in making program loans to eligible businesses that face barriers in accessing working capital and obtaining fixed asset financing.

Notwithstanding Chapter 166. of the Revised Code, the Director of Budget and Management may transfer up to \$3,000,000 per fiscal year in cash on an as needed basis at the request of the Director of Development from the Facilities Establishment Fund (Fund 037) to the Capital Access Loan Program Fund (Fund 5S9). The transfer is subject to Controlling Board approval pursuant to section 166.03 of the Revised Code.

Sec. 45. OEB OHIO EDUCATIONAL TELECOMMUNICATIONS NETWORK COMMISSION

General Revenue Fund

GRF 374-100	Personal Services	\$	1,585,648	\$	1,705,463
GRF 374-200	Maintenance	\$	902,477	\$	891,968
GRF 374-300	Equipment	\$	46,760	\$	45,313
GRF 374-401	Statehouse News Bureau	\$	253,175	\$	245,344
GRF 374-402	Ohio Government	\$	403,026	\$	910,296
	Telecommunications Studio				
GRF 374-404	Telecommunications	\$	5,239,754	\$	5,051,174
	Operating Subsidy				
TOTAL GRF General Revenue Fund		\$	8,430,840	\$	8,849,558

General Services Fund Group

4F3 374-603	Affiliate Services	\$	2,941,810	\$	3,067,586
4T2 374-605	Government	\$	75,000	\$	150,000
	Television/Telecommunications				
	Operating				
TOTAL GSF General Services					
Fund Group		\$	3,016,810	\$	3,217,586
TOTAL ALL BUDGET FUND GROUPS		\$	11,447,650	\$	12,067,144

STATEHOUSE NEWS BUREAU

The foregoing appropriation item 374-401, Statehouse News Bureau, shall be used solely to support the operations of the Ohio Statehouse News Bureau.

OHIO GOVERNMENT TELECOMMUNICATIONS STUDIO

The foregoing appropriation item 374-402, Ohio Government Telecommunications Studio, shall be used solely to support the operations of the Ohio Government Telecommunications Studio.

TELECOMMUNICATIONS OPERATING SUBSIDY

The foregoing appropriation item 374-404, Telecommunications Operating Subsidy, shall be distributed by the Ohio Educational Telecommunications Network Commission to Ohio's qualified public educational television stations, radio reading services, and educational radio stations to support their operations. The funds shall be distributed pursuant to an allocation developed by the Ohio Educational Telecommunications Network Commission.

GOVERNMENT TELEVISION/TELECOMMUNICATIONS OPERATING

Beginning on January 1, 2002, General Service Fund 4T2, Government Television/Telecommunications Operating, currently under the direction of the Capital Square Review and Advisory Board, shall be ~~under the direction of~~ transferred to the Ohio Educational Telecommunications Network Commission. The Director of Budget and Management shall transfer, by January 15, 2002, all remaining balances in General Services Fund 4T2, Government Television/Telecommunications Operating, in the Capital Square Review and Advisory Board to General Services Fund 4T2, Government Television/Telecommunications Operating, in the Ohio Educational Telecommunications Network Commission. General Services Fund 4T2, Government Television/Telecommunications Operating, is hereby created in the Ohio Educational Telecommunications Network Commission.

Sec. 63.25. REFUND OF SETS PENALTY

The Department of Job and Family Services shall ~~notify the Controlling Board immediately on receipt of~~ deposit any refunds for penalties that were paid directly or indirectly by the state for the Support Enforcement Tracking System (SETS). ~~Any and all refunds received for such penalties shall be deposited in their entirety to the General Revenue Fund 3V6, TANF Block Grant.~~

Sec. 74.01. DIVISION OF MENTAL HEALTH - HOSPITALS

General Revenue Fund

GRF 334-408	Community and Hospital Mental Health Services	\$	356,469,074	\$	352,719,838
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			<u>359,469,071</u>		<u>372,719,838</u>
GRF 334-506	Court Costs	\$	958,791	\$	976,652
TOTAL GRF General Revenue Fund		\$	<u>357,427,862</u>	\$	<u>353,696,490</u>
			<u>360,427,862</u>		<u>373,696,490</u>
General Services Fund Group					
149 334-609	Hospital Rotary - Operating Expenses	\$	10,451,492	\$	10,451,492
150 334-620	Special Education	\$	152,500	\$	152,500
TOTAL GSF General Services Fund Group		\$	10,603,992	\$	10,603,992
Federal Special Revenue Fund Group					
3A8 334-613	Federal Letter of Credit	\$	9,000	\$	0
3B0 334-617	Elementary and Secondary Education Act	\$	202,774	\$	214,340
3B1 334-635	Hospital Medicaid Expansion	\$	2,000,000	\$	2,000,000
324 334-605	Medicaid/Medicare	\$	8,791,748	\$	9,043,700
5L2 334-619	Health Foundation/Greater Cincinnati	\$	131,600	\$	94,869
TOTAL FED Federal Special Revenue Fund Group		\$	11,135,122	\$	11,352,909
State Special Revenue Fund Group					
485 334-632	Mental Health Operating	\$	1,991,448	\$	1,989,912
692 334-636	Community Mental Health Board Risk Fund	\$	361,323	\$	370,356
TOTAL SSR State Special Revenue Fund Group		\$	2,352,771	\$	2,360,268
TOTAL ALL BUDGET FUND GROUPS		\$	<u>381,519,747</u>	\$	<u>378,013,659</u>
			<u>384,519,747</u>		<u>398,013,659</u>

COMMUNITY AND HOSPITAL MENTAL HEALTH SERVICES

Of the foregoing appropriation item 334-408, Community and Hospital Mental Health Services, the appropriation increases made by the amendment in H.B. 405 of the 124th General Assembly shall be used by the state mental hospitals for operating purposes.

COMMUNITY MENTAL HEALTH BOARD RISK FUND

The foregoing appropriation item 334-636, Community Mental Health Board Risk Fund, shall be used to make payments pursuant to section 5119.62 of the Revised Code.

Sec. 74.02. DIVISION OF MENTAL HEALTH - COMMUNITY SUPPORT SERVICES**General Revenue Fund**

GRF 335-419	Community Medication Subsidy	\$	7,682,295	\$	7,701,549
GRF 335-502	Community Mental Health Programs	\$	38,166,674	\$	38,166,674
GRF 335-508	Services for Severely Mentally Disabled	\$	60,405,135	\$	60,905,135
TOTAL GRF General Revenue Fund		\$	106,254,104	\$	106,773,358
General Services Fund Group					

4N8	335-606	Family Stability Incentive	\$	7,460,600	\$	7,647,115
4P9	335-604	Community Mental Health Projects	\$	200,000	\$	200,000
TOTAL GSF General Services Fund Group						
			\$	7,660,600	\$	7,847,115
Federal Special Revenue Fund Group						
3A7	335-612	Social Services Block Grant	\$	9,314,108	\$	9,314,108
3A8	335-613	Federal Grant - Community Mental Health Board Subsidy	\$	960,000	\$	960,000
3A9	335-614	Mental Health Block Grant	\$	12,754,654	\$	12,737,654
3B1	335-635	Community Medicaid Expansion	\$	157,480,000	\$	165,355,000
State Special Revenue Fund Group						
632	335-616	Community Capital Replacement	\$	250,000	\$	250,000
TOTAL SSR State Special Revenue Fund Group						
			\$	250,000	\$	250,000
TOTAL FED Federal Special Revenue Fund Group						
			\$	180,508,762	\$	188,366,762
TOTAL ALL BUDGET FUND GROUPS						
			\$	294,673,466	\$	303,237,235
DEPARTMENT TOTAL						
GENERAL REVENUE FUND						
			\$	~~515,555,079~~	\$	~~513,832,559~~
				<u>518,555,079</u>		<u>533,832,559</u>
DEPARTMENT TOTAL						
GENERAL SERVICES FUND GROUP						
			\$	20,278,415	\$	20,489,025
DEPARTMENT TOTAL						
FEDERAL SPECIAL REVENUE FUND GROUP						
			\$	199,327,157	\$	206,370,154
DEPARTMENT TOTAL						
STATE SPECIAL REVENUE FUND GROUP						
			\$	6,493,130	\$	5,572,886
DEPARTMENT TOTAL						
INTRAGOVERNMENTAL FUND GROUP						
			\$	76,095,310	\$	78,181,973
TOTAL DEPARTMENT OF MENTAL HEALTH						
				~~817,749,091~~		~~824,446,597~~
				<u>820,749,091</u>		<u>844,446,597</u>

Sec. 94.11. BREAKTHROUGH INVESTMENTS

OHIO PLAN STUDY COMMITTEE

There is established the Ohio Plan Study Committee, which shall determine appropriate ways to fund the Ohio Plan for Technology and Development. The Study Committee shall consist of the Governor's Science Advisor, the Director of Budget and Management, the Chancellor of the Board of Regents, the Director of Development, three members of the House of Representatives appointed by the Speaker, of whom no more than two shall be of the same political party, and three members of the Senate appointed by the President, of whom no more than two shall be of the same political party. Administrative support for the Study Committee shall be provided by the Board of Regents. The Study Committee shall report its recommendations to the Governor and the General Assembly no later than ~~December 31, 2001~~ March 15, 2002. After it submits its report, the Study

Committee shall cease to exist. The Ohio Plan for Technology and Development is intended to promote collaborative efforts among state government, higher education, and business and industry that will lead to the development of New Economy applications of science and technology and, ultimately, new business start-ups in the state and increased economic prosperity for the citizens of Ohio.

APPALACHIAN NEW ECONOMY PARTNERSHIP

The foregoing appropriation item 235-428, Appalachian New Economy Partnership, shall be distributed to Ohio University to begin a multi-campus and multi-agency coordinated effort to link Appalachia to the new economy. Ohio University shall use these funds to provide leadership in the development and implementation of initiatives in the areas of entrepreneurship, management, education, and technology.

Sec. 104. SOS SECRETARY OF STATE

General Revenue Fund

GRF 050-321	Operating Expenses	\$	3,300,000	\$	3,300,000
GRF 050-403	Election Statistics	\$	146,963	\$	154,882
GRF 050-407	Pollworkers Training	\$	231,400	\$	327,600
GRF 050-409	Litigation Expenditures	\$	26,210	\$	27,622
TOTAL GRF General Revenue Fund		\$	3,704,573	\$	3,810,104

General Services Fund Group

4S8 050-610	Board of Voting Machine Examiners	\$	7,200	\$	7,200
412 050-607	Notary Commission	\$	166,284	\$	171,273
413 050-601	Information Systems	\$	153,300	\$	157,133
414 050-602	Citizen Education Fund	\$	80,000	\$	70,000
TOTAL General Services Fund Group		\$	406,784	\$	405,606

State Special Revenue Fund Group

5N9 050-607	Technology Improvements	\$	120,000	\$	121,000
599 050-603	Business Services Operating Expenses	\$	~~11,880,000~~	\$	~~11,979,000~~
			<u>12,100,000</u>		<u>12,208,000</u>

TOTAL SSR State Special Revenue

Fund Group	\$	~~12,000,000~~	\$	~~12,100,000~~
		<u>12,220,000</u>		<u>12,329,000</u>

Holding Account Redistribution Fund Group

R01 050-605	Uniform Commercial Code Refunds	\$	65,000	\$	65,000
R02 050-606	Corporate/Business Filing Refunds	\$	185,000	\$	185,000

TOTAL 090 Holding Account

Redistribution Fund Group	\$	250,000	\$	250,000
TOTAL ALL BUDGET FUND GROUPS	\$	~~16,361,357~~	\$	~~16,565,710~~
		<u>16,581,357</u>		<u>16,794,710</u>

BOARD OF VOTING MACHINE EXAMINERS

The foregoing appropriation item 050-610, Board of Voting Machine Examiners, shall be used to pay for the services and expenses of the

members of the Board of Voting Machine Examiners, and for other expenses that are authorized to be paid from the Board of Voting Machine Examiners Fund, which is created in section 3506.05 of the Revised Code. Moneys not used shall be returned to the person or entity submitting the equipment for examination. If it is determined that additional appropriations are necessary, such amounts are appropriated.

HOLDING ACCOUNT REDISTRIBUTION GROUP

The foregoing appropriation items 050-605 and 050-606, Holding Account Redistribution Fund Group, shall be used to hold revenues until they are directed to the appropriate accounts or until they are refunded. If it is determined that additional appropriations are necessary, such amounts are appropriated.

Sec. 140. TEMPORARY STABILIZATION OF LOCAL GOVERNMENT DISTRIBUTIONS

(A) On or before the third day of each month of the period July 2001 through May 2002, the Tax Commissioner shall determine the amounts credited under sections 5727.45, 5733.12, 5739.21, 5741.03, and 5747.03 of the Revised Code, respectively, to the Local Government Fund, to the Library and Local Government Support Fund, and to the Local Government Revenue Assistance Fund in the twelfth preceding month. On or before June 3, 2002, the Tax Commissioner shall determine the amounts credited under sections 5727.45, 5733.12, 5739.21, 5741.03, and 5747.03 of the Revised Code, respectively, to the Local Government Fund, to the Library and Local Government Support Fund, and to the Local Government Revenue Assistance Fund in June 2000. For purposes of this section, any amount transferred during the period January 1, 2001, through June 30, 2001 to the Local Government Fund, to the Local Government Revenue Assistance Fund, or to the Library and Local Government Support Fund under section 131.44 of the Revised Code shall be considered to be an amount credited to that respective fund under section 5747.03 of the Revised Code.

Notwithstanding sections 5727.45, 5733.12, 5739.21, 5741.03, and 5747.03 of the Revised Code to the contrary, for each month in the period July 1, 2001, through June 30, 2003, from the public utility excise, corporate franchise, sales, use, and personal income taxes collected:

(1) An amount shall first be credited to the Local Government Fund that equals the amount credited to that fund from that tax according to the schedule in division (B) of this section.

(2) An amount shall next be credited to the Local Government Revenue Assistance Fund that equals the amount credited to that fund from that tax according to the schedule in division (B) of this section.

(3) An amount shall next be credited to the Library and Local Government Support Fund that equals the amount credited to that fund from that tax according to the schedule in division (B) of this section.

(B) The amounts shall be credited from each tax to each respective fund as follows:

(1) In July 2001 and July 2002, the amounts credited in July 2000;

(2) In August 2001 and August 2002, the amounts credited in August 2000;

(3) In September 2001 and September 2002, the amounts credited in September 2000;

(4) In October 2001 and October 2002, the amounts credited in October 2000;

(5) In November 2001 and November 2002, the amounts credited in November 2000;

(6) In December 2001 and December 2002, the amounts credited in December 2000;

(7) In January 2002 and January 2003, the amounts credited in January 2001;

(8) In February 2002 and February 2003, the amounts credited in February 2001;

(9) In March 2002 and March 2003, the amounts credited in March 2001;

(10) In April 2002 and April 2003, the amounts credited in April 2001;

(11) In May 2002 and May 2003, the amounts credited in May 2001;

(12) In June 2002 and June 2003, the amounts credited in June 2000.

(C) Notwithstanding section 5727.84 of the Revised Code to the contrary, for the period July 1, 2001, through June 30, 2003, no amounts shall be credited to the Local Government Fund or to the Local Government Revenue Assistance Fund from the kilowatt hour tax, and such amounts that would have otherwise been required to be credited to such funds shall instead be credited to the General Revenue Fund. Notwithstanding section 131.44 of the Revised Code to the contrary, for the period July 1, 2001, through June 30, 2003, no amounts shall be transferred to the Local Government Fund, the Local Government Revenue Assistance Fund, or the Library and Local Government Support Fund from the Income Tax Reduction Fund, and such amounts that would have otherwise been transferred to such funds from the Income Tax Reduction Fund shall instead be transferred to the General Revenue Fund.

(D) Notwithstanding any other provision of law to the contrary, the Tax Commissioner shall do each of the following:

(1) By the fourth day of February 2002, the commissioner shall subtract the amount calculated in division (D) (1) (b) of this section from the amount calculated in division (D) (1) (a) of this section. If the amount in division (D) (1) (a) of this section is greater than the amount in division (D) (1) (b) of this section, then subtract the difference from the amount of money from the income tax credited to the Local Government Fund, the Local Government Revenue Assistance Fund, and the Library and Local Government Support Fund in February 2002.

(a) Money credited to the Local Government Fund, the Local Government Revenue Assistance Fund, and the Library and Local Government Support Fund from July 2001 through January 2002, less each fund's proportional share of \$64,092,000;

(b) The amount of money that would have been credited to the Local Government Fund, the Local Government Revenue Assistance Fund, and the Library and Local Government Support Fund from July 2001 through January 2002, if sections 5727.45, 5733.12, 5739.21, 5741.03, and 5747.03 of the Revised Code were in effect during this period.

(2) By the fourth day of June 2002, the commissioner shall subtract the amount calculated in division (D) (2) (b) of this section from the amount calculated in division (D) (2) (a) of this section. If the amount in division (D) (2) (a) of this section is greater than the amount in division (D) (2) (b) of this section, then subtract any positive difference from the amount of money from the income tax credited to the Local Government Fund, the Local Government Revenue Assistance Fund, and the Library and Local Government Support Fund in June 2002.

(a) Money credited to the Local Government Fund, the Local Government Revenue Assistance Fund, and the Library and Local Government Support Fund from February 2002 through May 2002, plus any money subtracted under division (D) (1) of this section;

(b) The amount of money that would have been credited to the Local Government Fund, the Local Government Revenue Assistance Fund, and the Library and Local Government Support Fund from February 2002 through May 2002, if sections 5727.45, 5733.12, 5739.21, 5741.03, and 5747.03 of the Revised Code were in effect during this period.

(3) By the fourth day of February 2003, the commissioner shall subtract the amount calculated in division (D) (3) (b) of this section from the amount calculated in division (D) (3) (a) of this section. If the amount in division (D) (3) (a) of this section is greater than the amount in division (D) (3) (b) of this section, then subtract the difference from the amount of money from the income tax credited to the Local Government Fund, the Local Government

Revenue Assistance Fund, and the Library and Local Government Support Fund in February 2003.

(a) Money credited to the Local Government Fund, the Local Government Revenue Assistance Fund, and the Library and Local Government Support Fund from June 2002 through January 2003, less each fund's proportional share of \$64,092,000, plus the amount subtracted under division (D) (2) of this section;

(b) The amount of money that would have been credited to the Local Government Fund, the Local Government Revenue Assistance Fund, and the Library and Local Government Support Fund from June 2002 through January 2003, if sections 5727.45, 5733.12, 5739.21, 5741.03, and 5747.03 of the Revised Code were in effect during this period.

(4) By the fourth day of June 2003, the commissioner shall subtract the amount calculated in division (D) (4) (b) of this section from the amount calculated in division (D) (4) (a) of this section. If the amount in division (D) (4) (a) of this section is greater than the amount in division (D) (4) (b) of this section, then subtract any positive difference from the amount of money from the income tax credited to the Local Government Fund, the Local Government Revenue Assistance Fund, and the Library and Local Government Support Fund in June 2003.

(a) Money credited to the Local Government Fund, the Local Government Revenue Assistance Fund, and the Library and Local Government Support Fund from February 2003 through May 2003, plus any money subtracted under division (D) (3) of this section;

(b) The amount of money that would have been credited to the Local Government Fund, the Local Government Revenue Assistance Fund, and the Library and Local Government Support Fund from February 2003 through May 2003, if sections 5727.45, 5733.12, 5739.21, 5741.03, and 5747.03 of the Revised Code were in effect during this period.

Notwithstanding any other provision of law to the contrary, the Tax Commissioner shall compute separate adjustments to the amounts credited from the public utility excise, corporate franchise, sales, use, and personal income taxes to the Local Government Fund, the Local Government Revenue Assistance Fund, and the Library and Local Government Support Fund during July 2001. The adjustments shall equal the amount credited to each respective fund from each respective tax during June 2000 minus the amount credited to that fund from that tax during June 2001. If an adjustment is a positive amount, during July 2001, such amount shall be credited to the Local Government Fund, the Local Government Revenue Assistance Fund, or the Library and Local Government Support Fund, as

appropriate, and shall be deducted from the General Revenue Fund. If an adjustment is a negative amount, during July 2001, such amount shall be deducted from the Local Government Fund, the Local Government Revenue Assistance Fund, or the Library and Local Government Support Fund, as appropriate, and shall be credited to the General Revenue Fund. Any amount remaining in the Local Government Fund, the Local Government Revenue Assistance Fund, or the Library and Local Government Support Fund after the distributions from such funds are made to local governments in August 2001, shall be certified by the Tax Commissioner to the Director of Budget and Management by August 15, 2001, and the Director of Budget and Management shall transfer such amount from each respective fund to the General Revenue Fund by August 31, 2001.

For purposes of this section, "pro rata share" means the percentage calculated for each county and used in each month of the period July 2000 through June 2001 to distribute the amounts credited to the Library and Local Government Support Fund in accordance with section 5747.47 of the Revised Code.

Notwithstanding any other provision of law to the contrary, in July 2001, each county undivided library and local government support fund shall receive from the Library and Local Government Support Fund an amount equal to the amount it would have received pursuant to section 5747.47 of the Revised Code for that month, minus its pro rata share of any amount that has been or shall be transferred from the Library and Local Government Support Fund to the OPLIN Technology Fund in that month. In August 2001, each county undivided library and local government support fund shall receive from the Library and Local Government Support Fund an amount equal to the amount it received from that fund in July 2000 and August 2000 minus the amount it received from that fund in July 2001 and minus its pro rata share of any amount transferred from that fund to the OPLIN Technology Fund in July 2001 or August 2001. In August 2001, each county undivided local government fund shall receive from the Local Government Fund, each municipality that receives a distribution directly from the Local Government Fund shall receive from that fund, and each county undivided local government revenue assistance fund shall receive from the Local Government Revenue Assistance Fund an amount equal to the amount it received from that respective fund in July 2000 and August 2000 minus the amount it received from that respective fund in July 2001. In each month of the periods September 1, 2001, through June 30, 2002, and September 1, 2002, through June 30, 2003, each county undivided local government fund shall receive from the Local Government Fund, each

municipality that receives a distribution directly from the Local Government Fund shall receive from that fund, each county undivided local government revenue assistance fund shall receive from the Local Government Revenue Assistance Fund, and each county undivided library and local government support fund shall receive from the Library and Local Government Support Fund, the same amount it received from that respective fund in the corresponding month of the period September 1, 2000, through June 2001. In each month of the period July 1, 2002, through August 31, 2002, and in the month of July 2003, each county undivided local government fund shall receive from the Local Government Fund, each municipality that receives a distribution directly from the Local Government Fund shall receive from that fund, each county undivided local government revenue assistance fund shall receive from the Local Government Revenue Assistance Fund, and each county undivided library and local government support fund shall receive from the Library and Local Government Support Fund, the same amount it received from that respective fund in the corresponding month of the period July 1, 2000, through August 31, 2000. If during any month of the period September 1, 2001, through July 31, 2003, a transfer is made from the Library and Local Government Support Fund to the OPLIN Technology Fund, the amount distributed to each county undivided library and local government support fund shall be reduced by its pro rata share of the amount transferred.

During the period July 1, 2001, through July 31, 2003, the Director of Budget and Management shall issue those directives to state agencies that are necessary to ensure that the appropriate amounts are distributed to the Local Government Fund, to the Local Government Revenue Assistance Fund, and to the Library and Local Government Support Fund to accomplish the purposes of this section."

SECTION 20. That existing Sections 41.15, 45, 63.25, 74.01, 74.02, 94.11, 104, and 140 of Am. Sub. H.B. 94 of the 124th General Assembly are hereby repealed.

SECTION 21. That Sections 41.10 and 63.09 of Am. Sub. H.B. 94 of the 124th General Assembly, as amended by Am. Sub. H.B. 299 of the 124th General Assembly, be amended to read as follows:

" Sec. 41.10. EMERGENCY SHELTER HOUSING GRANTS

(A) As used in this section, "emergency shelter housing" means a structure suitable for the temporary housing of the homeless and the

provision of, or referral to, supportive services. Shelters that restrict admission to victims of domestic violence, runaways, or alcohol or substance abusers shall not be considered emergency shelter housing.

(B) The foregoing appropriation item 195-440, Emergency Shelter Housing Grants, shall be used by the Office of Housing and Community Partnerships in the Department of Development to make grants to private, nonprofit organizations to provide emergency shelter housing for the homeless. The department shall distribute the grants pursuant to rules adopted by the Director of Development. The director may amend or rescind the rules and may adopt other rules necessary to implement this section. In awarding grants, the department shall give preference to organizations applying to fund existing emergency shelter housing.

The department shall notify each organization that applied for a grant under this section of the amount of its grant award, if any. To receive a grant, the organization shall provide matching funds equal to 50 per cent of the total grant it was awarded. The organization shall expend its grant for shelter operations and supportive services, which include employment assistance, case management, information and referral services, transportation, and clothing. In providing employment assistance, the organization shall, at a minimum, refer persons to the Department of Job and Family Services.

LOW AND MODERATE INCOME HOUSING

The Director of Budget and Management, after consulting with the Director of Development, shall transfer up to \$19,000,000 from appropriation item 195-441, Low and Moderate Income Housing, to appropriation item 195-638, Low and Moderate Income Housing Trust Fund. This transfer shall be made via an intrastate transfer voucher.

UTILITY BILL CREDIT

The foregoing appropriation item 195-505, Utility Bill Credits, shall be used to provide utility and fuel assistance to eligible low-income Ohio households with elderly and disabled members.

TANF HOUSING PROGRAM

There is hereby established the TANF Housing Program to be administered by the Department of Development in accordance with an interagency agreement entered into with the Department of Job and Family Services under section 5101.801 of the Revised Code. The program shall provide benefits and services to TANF eligible individuals under a Title IV-A program pursuant to the requirements of section 5101.801 of the Revised Code.

The foregoing appropriation item 195-619, TANF Housing Program,

shall be used to provide supportive services for low-income families related to housing or homelessness, including housing counseling; to provide grants to nonprofit organizations to assist Title IV-A eligible families with incomes at or below 200 per cent of the federal poverty guidelines with down-payment assistance for homeownership or down-payment assistance toward the purchase of mobile homes, to provide emergency home repair funding for Title IV-A eligible families with incomes at or below 200 per cent of the federal poverty guidelines; to provide operating support for family emergency shelter programs; and to provide emergency rent and mortgage assistance for families with incomes at or below 200 per cent of the federal poverty guidelines. The funds shall not be used to match federal funds.

To the extent practicable and in order to prevent duplication of the provision of assistance, the Department of Development shall require applicants for these funds to provide evidence of collaboration with other county governmental entities, including, when appropriate, county job and family services departments.

The Department of Job and Family Services shall transfer into the TANF Housing Fund (3X3) of the Department of Development, which is hereby created, funds necessary to reimburse allowable TANF Housing Program expenditures as reported by the Department of Development. The transfer of funds shall be made by intrastate transfer vouchers processed against appropriation item 600-689, TANF Block Grant, of the Department of Job and Family Services and shall not exceed ~~\$5,200,000 in fiscal year 2002 and \$6,500,000 in fiscal year 2003~~ \$11,700,000 for the biennium. Encumbrances shall be allowed and maintained for agreements meeting provisions of this section and shall be maintained for a period not to exceed federal provisions for use of TANF Block Grant funds that have been committed for any federal TANF Block Grant year for services that are not considered to be "assistance" as defined in 45 C.F.R. 260.31(a).

No more than five per cent of the transferred funds may be used by the Department of Development for the administrative expenses of this program.

The benefits and services provided under the TANF Housing Program shall not be "assistance" as defined in 45 C.F.R. 260.31(a), and shall be benefits and services that 45 C.F.R. 260.31(b) excludes from the definition of assistance.

As used in this section, "federal poverty guideline" means the poverty guideline as defined by the United States Office of Management and Budget and revised by the United States Secretary of Health and Human Services in

accordance with section 673 of the "Community Services Block Grant Act," 95 Stat. 511 (1981), 42 U.S.C.A. 9902, as amended.

Sec. 63.09. TANF

TANF COUNTY INCENTIVES

Of the foregoing appropriation item 600-689, TANF Block Grant, the Department of Job and Family Services may provide financial incentives to those county departments of job and family services that have exceeded performance standards adopted by the state department, and where the board of county commissioners has entered into a written agreement with the state department under section 5101.21 of the Revised Code governing the administration of the county department. Any financial incentive funds provided pursuant to this division shall be used by the county department for additional or enhanced services for families eligible for assistance under Chapter 5107. or benefits and services under Chapter 5108. of the Revised Code or, on request by the county and approval by the Department of Job and Family Services, be transferred to the Child Care and Development Fund or the Social Services Block Grant. The county departments of job and family services may retain and expend such funds without regard to the state or county fiscal year in which the financial incentives were earned or paid. Each county department of job and family services shall file an annual report with the Department of Job and Family Services providing detailed information on the expenditure of these financial incentives and an evaluation of the effectiveness of the county department's use of these funds in achieving self-sufficiency for families eligible for assistance under Chapter 5107. or benefits and services under Chapter 5108. of the Revised Code.

TANF YOUTH DIVERSION PROGRAMS

Of the foregoing appropriation item 600-689, TANF Block Grant, \$19,500,000 in each fiscal year shall be allocated by the Department of Job and Family Services to the counties according to the allocation formula established in division (D) of section 5101.14 of the Revised Code. Of the funds allocated to each county, up to half may be used for contract services for unruly and misdemeanor diversionary programs.

The remaining funds not allocated for use in juvenile diversion activities may be used by the county for other contract child welfare services. In counties with separate departments of job and family services and public children services agencies, the county department of job and family services shall serve as a pass through to the public children services agencies for these funds. Separate public children services agencies receiving such funds shall comply with all TANF requirements, including reporting requirements

and timelines, as specified in state and federal laws, federal regulations, state rules, and the Title IV-A state plan, and are responsible for payment of any adverse audit finding, final disallowance of federal financial participation, or other sanction or penalty issued by the federal government or other entity concerning these funds.

Of the foregoing \$19,500,000 set aside, any funds remaining unspent on June 30, 2002, shall be carried forward and added to the earmark for fiscal year 2003, and allocated to the counties according to the allocation formula established in division (D) of section 5101.14 of the Revised Code.

KINSHIP NAVIGATORS

Of the foregoing appropriation item 600-689, TANF Block Grant, up to \$3 million in each fiscal year shall be allocated by the Department of Job and Family Services to county departments of job and family services for the purpose of making allocations to local public children services agencies to provide services in the Kinship Navigation program. The allocation to county departments of job and family services shall be based on the number of Ohio works first cases in the county, and the number of children seventeen years of age or younger in the county. The Department of Job and Family Services shall develop an appropriate method of reallocating these funds in each fiscal year among the county departments of job and family services, if they would otherwise be unspent.

TANF FAITH-BASED AND NON-PROFIT CAPACITY-BUILDING PROGRAMS

From the foregoing appropriation item 600-689, TANF Block Grant, up to \$1,000,000 in each fiscal year shall be used to support capacity-building efforts among faith-based and non-profit organizations, for the purpose of providing allowable services to TANF-eligible individuals. Organizations receiving these funds shall comply with all TANF requirements, and shall agree with the Department of Job and Family Services on reporting requirements to be incorporated into the grant agreement.

TANF EDUCATION

There is hereby established the Title IV-A Education Program to be administered by the Department of Education in accordance with an interagency agreement entered into with the Department of Job and Family Services under division (A)(2) of section 5101.801 of the Revised Code. The program shall provide benefits and services to TANF eligible individuals with incomes at or below 200 per cent of the federal poverty guidelines under a Title IV-A program pursuant to the requirements of section 5101.801 of the Revised Code. Upon approval by the Department of Job and Family Services, the Department of Education shall adopt policies

and procedures establishing program requirements for eligibility, services, fiscal accountability, and other criteria necessary to comply with the provisions of Title IV-A of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended.

The Department of Job and Family Services shall reimburse the General Revenue Fund through intrastate transfer vouchers for allowable Title IV-A Head Start expenditures reported by the Department of Education in fiscal year 2002 by amounts up to \$76,156,175 from Fund 3V6, TANF Block Grant, and in fiscal year 2003, up to \$98,843,825 from Fund 3V6, TANF Block Grant. The Department of Job and Family Services shall reimburse the General Revenue Fund through intrastate transfer vouchers for allowable Title IV-A student intervention services expenditures in fiscal year 2003 up to \$35,000,000 from Fund 3V6, TANF Block Grant.

COUNTY DEPARTMENTS OF JOB AND FAMILY SERVICES
TITLE IV-A ADULT LITERACY AND CHILD READING PROGRAMS

There is hereby established the Title IV-A Adult Literacy and Child Reading Program to be administered by the county departments of job and family services in accordance with division (B)(1) of section 5101.801 of the Revised Code. The program shall provide benefits and services to TANF-eligible individuals with incomes at or below 200 per cent of the federal poverty guidelines under a Title IV-A program pursuant to the requirements of section 5101.801 of the Revised Code. The county departments of job and family services shall ensure program requirements for eligibility, services, fiscal accountability, and other criteria necessary to comply with the provisions of Title IV-A of the "Social Security Act," 110 Stat. 2113 (1996), 42 U.S.C. 601, as amended, and ensure that benefits and services are allowable uses of federal Title IV-A funds as specified in 42 U.S.C.A. 604(a), except that they may not be "assistance" as defined in 45 C.F.R. 260.31(a). The benefits and services shall be benefits and services that 45 C.F.R. 260.31(b) excludes from the definition of "assistance." From the foregoing appropriation item 600-689, TANF Block Grant, up to \$5,000,000 in each fiscal year shall be used to support local adult literacy and child reading programs.

TALBERT HOUSE

In each fiscal year, the Director of Job and Family Services shall provide \$100,500 from appropriation item 600-689, TANF Block Grant, to the Hamilton County Department of Job and Family Services to contract with the Talbert House for the purpose of providing allowable services to TANF-eligible individuals with incomes at or below 200 per cent of the federal poverty guidelines. The contract between the Hamilton County

Department of Job and Family Services and the Talbert House shall establish conditions for the reimbursement of allowable Title IV-A expenditures for services that are allowable uses of federal Title IV-A funds as specified in 42 U.S.C.A. 604(a), except that they may not be "assistance" as defined in 45 C.F.R. 260.31(a). The benefits and services shall be benefits and services that 45 C.F.R. 260.31(b) excludes from the definition of "assistance." The contract shall also require Talbert House to comply with requirements of Title IV-A of the "Social Security Act," 110 Stat. 2113 (1996), 42 U.S.C. 601, as amended, including eligibility of individuals, reporting requirements, allowable benefits and services, use of funds, and audit requirements, as specified in state and federal laws, federal regulations, state rules, federal Office of Management and Budget circulars, and the Title IV-A state plan.

MONTGOMERY COUNTY OUT-OF-SCHOOL YOUTH PROJECT

In each fiscal year, the Director of Job and Family Services shall provide \$1,000,000 from appropriation item 600-689, TANF Block Grant, to the Montgomery County Department of Job and Family Services to be used to support the Out-of-School Youth Project in Montgomery County for the purpose of providing allowable services to TANF-eligible individuals. The Montgomery County Department of Job and Family Services and the Sinclair Community College shall comply with all TANF requirements, including reporting requirements and timelines, as specified in state and federal laws, federal regulations, state rules, and the Title IV-A state plan.

APPALACHIAN TECHNOLOGY AND WORKFORCE DEVELOPMENT ~~AND JOB TRAINING~~

From the foregoing appropriation item 600-689, TANF Block Grant, the Director of Job and Family Services shall provide up to \$15,000,000 to be awarded to the county departments of job and family services in the twenty-nine Appalachian counties, ~~contingent upon passage of H.B. 6 of the 124th General Assembly.~~ Each county shall be eligible to apply for an initial grant, or grants, the cumulative amount of which shall not exceed \$500,000 per county. These funds shall be used by the county departments of job and family services in coordination with the Governor's Office of Appalachia, the Governor's Regional Economic Office, and local development districts. These funds shall be used for the following eligible activities: workforce development and supportive services; ~~economic development;~~ microenterprise development and other entrepreneurship activities; technology expansion, technical assistance, and training; youth job training; ~~organizational development for workforce development partners;~~ and improving existing technology centers, ~~workforce development,~~ job creation

and retention, purchasing technology, ~~and technology~~ and technology infrastructure upgrades. The funds may be used to leverage other state and local funds for eligible activities.

As a condition on the use of these funds, each county department of job and family services shall have a committee that shall submit a plan for the intended use of these funds to the ~~Department of Job and Family Services Governor's Office of Appalachia~~. The plan shall ~~also~~ be reviewed by the Governor's Office of Appalachia, ~~the Governor's Regional Economic Office, and local development districts. Also~~ which may approve or disapprove the plan in whole or in part. The Governor's Office of Appalachia shall forward each final, approved plan to the Department of Job and Family Services. The plan must be developed and submitted by a county committee that includes, at a minimum, a county commissioner; a mayor of a municipality in the county; an economic development official from the county, local political subdivision, or development district; a representative of a chamber of commerce or a port authority in the county; a local or regional community action representative; and a representative from the county department of job and family services.

The Governor's Office of Appalachia shall develop guidelines for the submission and approval of plans, guidelines for quarterly monitoring and reporting on program activities after funds are awarded, and any other guidelines necessary for the administration of the program. The Department of Job and Family Services shall provide technical assistance and advice to the Governor's Office of Appalachia to facilitate the administration of the funds. The Governor's Office of Appalachia shall develop guidelines for the reallocation of unawarded funds.

Also as a condition on the use of these funds, each county ~~and contract agency~~ shall acknowledge that these funds are a one-time allocation, not intended to fund services beyond ~~September 30, 2002~~ June 30, 2003.

In fiscal year 2002, the TANF allocation to each of the Appalachian counties shall not be less than the TANF allocation amount for fiscal year 2001, as allocated according to the methodology set forth in paragraph (I) of rule 5101-6-03 of the Administrative Code.

The use of these funds shall comply with all TANF requirements, including reporting requirements and timelines, as specified in state and federal laws, federal regulations, state rules, and the Title IV-A state plan.

CENTER FOR FAMILY AND CHILDREN

Of the foregoing appropriation item 600-689, TANF Block Grant, \$150,000 in fiscal year 2002 shall be provided to the Center for Family and Children.

TANF FAMILY PLANNING

The Director of Budget and Management shall transfer by intrastate voucher, no later than the fifteenth day of July of each fiscal year, cash from the General Revenue Fund, appropriation item 600-410, TANF State, to General Services Fund 5C1 in the Department of Health, in an amount of \$250,000 in each fiscal year for the purpose of family planning services for children or their families whose income is at or below 200 per cent of the official poverty guideline.

TANF FEDERAL BLOCK GRANT FUNDS AND TRANSFERS

From the foregoing appropriation items 600-410, TANF State; 600-658, Child Support Collections; or 600-689, TANF Block Grant, or a combination of these appropriation items, no less than \$369,040,735 in each fiscal year shall be allocated to county departments of job and family services as follows:

County Allocations	\$276,586,957
WIA Supplement	\$35,109,178
Early Start - Statewide	\$38,034,600
Transportation	\$5,000,000
County Training	\$3,050,000
Adult Literacy and Child	
Reading Programs	\$5,000,000
Disaster Relief	\$5,000,000
School Readiness Centers	\$1,260,000

Upon the request of the Department of Job and Family Services, the Director of Budget and Management may seek Controlling Board approval to increase appropriations in appropriation item 600-689, TANF Block Grant, provided sufficient Federal TANF Block Grant funds exist to do so, without any corresponding decrease in other appropriation items. The Department of Job and Family Services shall provide the Office of Budget and Management and the Controlling Board with documentation to support the need for the increased appropriation.

All transfers of moneys from or charges against TANF Federal Block Grant awards for use in the Social Services Block Grant or the Child Care and Development Block Grant from either unobligated prior year appropriation authority in appropriation item 400-411, TANF Federal Block Grant, or 600-411, TANF Federal Block Grant, or from fiscal year 2002 and fiscal year 2003 appropriation authority in item 600-689, TANF Block Grant, shall be done ten days after the Department of Job and Family Services gives written notice to the Office of Budget and Management. The Department of Job and Family Services shall first provide the Office of

Budget and Management with documentation to support the need for such transfers or charges for use in the Social Services Block Grant or in the Child Care and Development Block Grant.

The Department of Job and Family Services shall in each fiscal year of the biennium transfer the maximum amount of funds from the federal TANF Block Grant to the federal Social Services Block Grant as permitted under federal law. Not later than July 15, 2001, the Department of Job and Family Services shall draw \$60,000,000 in receipts from TANF funds that were transferred into the Social Services Block Grant into State Special Revenue Fund 5Q8, in the Office of Budget and Management. Not later than June 1, 2002, the Director of Budget and Management shall determine the amount of funds in State Special Revenue Fund 5Q8 that is needed for the purpose of balancing the General Revenue Fund, and may transfer that amount to the General Revenue Fund. Not later than June 1, 2003, the Director of Budget and Management shall determine the amount of funds in State Special Revenue Fund 5Q8 that is needed for the purpose of balancing the General Revenue Fund, and may transfer that amount to the General Revenue Fund. Any moneys remaining in State Special Revenue Fund 5Q8 on June 15, 2003, shall be transferred not later than June 20, 2003, to Fund 3V6, TANF Block Grant, in the Department of Job and Family Services.

Before the thirtieth day of September of each fiscal year, the Department of Job and Family Services shall file claims with the United States Department of Health and Human Services for reimbursement for all allowable expenditures for services provided by the Department of Job and Family Services, or other agencies that may qualify for Social Services Block Grant funding pursuant to Title XX of the Social Security Act. The Department of Job and Family Services shall deposit, into Fund 5E6, State Option Food Stamps, \$6 million, into Fund 5P4, TANF Child Welfare, \$7.5 million, into Fund 3W5, Health Care Services, \$500,000, into Fund 3W8, Hippy Program, \$62,500, and into Fund 3W9, Adoption Connection, \$50,000 and deposit in fiscal year 2002, into Fund 3W2, Title XX Vocational Rehabilitation, \$600,000, into Fund 162 in the Department of Natural Resources, \$7,885,349, and into Fund 3W3, Adult Special Needs, \$4,720,227 in receipts from TANF Block Grant funds credited to the Social Services Block Grant. In fiscal year 2003, if, pursuant to federal law, the state is allowed to transfer up to 10 per cent of the TANF block grant and no less than \$72,796,826 for the purposes of reimbursing allowable expenditures for services provided by the Department of Job and Family Services, or other agencies that may qualify for Social Services Block Grant funding pursuant to Title XX of the Social Security Act, then the

Department of Job and Family Services shall deposit \$6 million into Fund 5E6, State Option Food Stamps, \$7.5 million into Fund 5P4 TANF Child Welfare, \$897,052 into Fund 3W2, Title XX Vocational Rehabilitation, and \$500,000 into Fund 3W5, Health Care Services. To the extent that the amount allowed to be transferred is less than the \$72,796,826, then the amounts deposited into the above funds shall be reduced proportionally. On verification of the receipt of the above revenue, the funds provided by these transfers shall be used as follows:

Fund 5E6	
Second Harvest Food Bank in fiscal year 2002	\$4,500,000
Second Harvest Food Bank in fiscal year 2003	\$4,500,000
Child Nutrition Services in fiscal year 2002	\$900,000
Child Nutrition Services in fiscal year 2003	\$900,000
Ohio Alliance of Boys and Girls Clubs in fiscal year 2002	\$600,000
Ohio Alliance of Boys and Girls Clubs in fiscal year 2003	\$600,000
Fund 5P4	
Support and Expansion for PCSA Activities in fiscal year 2002	\$5,500,000
Support and Expansion for PCSA Activities in fiscal year 2003	\$5,500,000
Pilot Projects for Violent and Aggressive Youth in fiscal year 2002	\$2,000,000
Pilot Projects for Violent and Aggressive Youth in fiscal year 2003	\$2,000,000
Fund 3W2	
Title XX Vocational Rehabilitation in fiscal year 2002	\$600,000
Fund 3W3	
Adult Protective Services in fiscal year 2002	\$120,227
Non-TANF Adult Assistance in fiscal year 2002	\$1,000,000
Community-Based Correctional Facilities in fiscal year 2002	\$3,600,000
Fund 162	
CCC Operations in fiscal year 2002	\$7,885,349
Fund 3W5	
Abstinence-only Education in fiscal year 2002	\$500,000
Abstinence-only Education in fiscal year 2003	\$500,000
Fund 3W8	

Hippy Program	\$62,500
Fund 3W9	
Adoption Connection	\$50,000
WELLNESS	

The foregoing appropriation item 600-690, Wellness, shall be used by county departments of job and family services for teen pregnancy prevention programming. Local contracts shall be developed between county departments of job and family services and local family and children first councils for the administration of TANF funding for this program."

SECTION 22. That existing Sections 41.10 and 63.09 of Am. Sub. H.B. 94 of the 124th General Assembly, as amended by Am. Sub. H.B. 299 of the 124th General Assembly, are hereby repealed.

SECTION 23. That Section 10 of Am. Sub. S.B. 192 of the 123rd General Assembly be amended to read as follows:

" Sec. 10. ~~Sections Section 8 and 9 of this act~~ Am. Sub. S.B. 192 of the 123rd General Assembly shall remain in full force and effect commencing on July 1, 2000, and terminating on June 30, 2002, for the purpose of drawing money from the state treasury in payment of liabilities lawfully incurred thereunder, and on June 30, 2002, and not before, the moneys appropriated thereby shall lapse into the funds from which they are severally appropriated.

The appropriations made in ~~Sections Section 8 and 9 of this act~~ Am. Sub. S.B. 192 of the 123rd General Assembly are subject to all provisions of the capital appropriations bill governing the 2000-2002 biennium that are generally applicable to such appropriations. Expenditures from appropriations contained in ~~Sections Section 8 and 9~~ shall be accounted for as though made in the capital appropriations bill governing the 2000-2002 biennium."

SECTION 24. That existing Section 10 of Am. Sub. S.B. 192 of the 123rd General Assembly is hereby repealed.

SECTION 25. That Section 9 of Am. Sub. S.B. 192 of the 123rd General Assembly, as amended by Am. Sub. H.B. 94 of the 124th General Assembly, be amended to read as follows:

" Sec. 9. ~~All items set forth in this section are hereby appropriated out of~~

~~any moneys in the state treasury to the credit of the Law Enforcement Improvements Trust Fund (Fund J87) that are not otherwise appropriated.~~

Appropriations

AGO ATTORNEY GENERAL

Tobacco Master Settlement Agreement Fund Group

CAP-716	Lab and Training Facility Improvements			
J87 055-635	Law Enforcement Technology, Training, and Facility Enhancements	\$	0	\$ 5,200,000
TOTAL Attorney General TSF Tobacco Master Settlement Agreement Fund Group		\$	0	\$ 5,200,000
TOTAL Law Enforcement Improvements Trust Fund		\$	0	\$ 5,200,000

ALL BUDGET FUND GROUPS

LAW ENFORCEMENT IMPROVEMENTS TRUST FUND

The foregoing appropriation item 055-635, Law Enforcement Technology, Training, and Facility Enhancements shall be used in accordance with section 183.10 of the Revised Code. Notwithstanding anything to the contrary contained in sections 9.33 to 9.332 and Chapters 123. and 153. of the Revised Code, the Office of the Attorney General may negotiate, enter into, and administer a contract that combines both the design and construction elements into one contract for the Ohio Peace Officer Training Academy Outdoor Training Facility and Improvements project, which is funded from appropriation item 055-635, Law Enforcement Technology, Training, and Facility Enhancements."

SECTION 26. That existing Section 9 of Am. Sub. S.B. 192 of the 123rd General Assembly, as amended by Am. Sub. H.B. 94 of the 124th General Assembly, is hereby repealed.

SECTION 27. That section 11 of Sub. H.B. 73 of the 124th General Assembly is hereby repealed.

SECTION 28. (A) The committee to study a sales tax holiday is hereby created. The committee shall consist of eleven members, one of whom shall be the Tax Commissioner. The Speaker of the House of Representatives shall appoint three members of the House to the committee, no more than two of whom shall be from the majority party. The Speaker also shall appoint a member representing retail merchants and a member who is a county commissioner. The President of the Senate shall appoint three members of the Senate to the committee, no more than two of whom shall

be from the majority party. The President also shall appoint a member representing consumer advocacy groups and a member representing the Ohio Manufacturers Association. The members of the committee shall be appointed within thirty days after the effective date of this section. The members shall select a chairperson of the committee from among themselves.

(B) The committee shall issue a report to the General Assembly by March 1, 2002. However, if Congress enacts legislation by that date providing national sales tax relief, the committee shall issue no report. After submitting its report, or after determining no report is to be issued because of Congressional action, the committee shall cease to exist.

SECTION 29. BUDGET STABILIZATION FUND TRANSFERS

Notwithstanding section 131.43 and division (D) of section 127.14 of the Revised Code, the Director of Budget and Management may, with Controlling Board approval, transfer up to \$248 million from the Budget Stabilization Fund to the General Revenue Fund during the 2002-2003 biennium to help ensure that the available revenue receipts and balances in the General Revenue Fund are not less than the appropriations for each fiscal year.

Notwithstanding section 131.43 and division (D) of section 127.14 of the Revised Code, the Director of Budget and Management shall transfer, not later than 30 days after the effective date of this section, \$8.0 million from the Budget Stabilization Fund to the General Revenue Fund. These funds shall be used for emergency purposes, to include, but not be limited to, the Department of Health and Department of Agriculture for anthrax and bioterrorism testing, the Adjutant General for costs associated with the deployment of troops, armory maintenance, equipment costs and capital needs, the Department of Public Safety, security, and other emergency purpose expenses. These amounts are hereby appropriated for General Revenue Fund appropriation line items established by the Director of Budget and Management.

Prior to utilizing these funds, the appropriate agency must receive the approval of the Controlling Board. Any of these funds unspent in fiscal year 2002 shall be transferred to fiscal year 2003 by the Director of Budget and Management for the same purpose as in fiscal year 2002.

The unobligated and unencumbered balance of these funds as of June 30, 2003, shall be transferred back to the Budget Stabilization Fund.

SECTION 30. TRANSFERS FROM THE BUDGET STABILIZATION FUND

Within ten working days after the end of fiscal year 2003, the Director of Budget and Management shall determine the General Revenue Fund tax revenues for fiscal year 2003. If the director finds that the tax revenues are greater than \$17,037,900,000, the director shall transfer the amount that is in excess of \$17,037,900,000 from the General Revenue Fund to the Budget Stabilization Fund.

SECTION 31. LOAN FROM BUDGET STABILIZATION FUND TO LTV STEEL

The Director of Budget and Management, with Controlling Board approval, may provide a loan of up to \$5,000,000 in fiscal year 2002 from the Budget Stabilization Fund to LTV Steel Company, Incorporated. This state loan must be matched with an equivalent amount from the City of Cleveland and also an equivalent amount from Cuyahoga County. These funds must be used by LTV Steel for allowable purposes under Article VIII, Section 13, Ohio Constitution. The state shall hold a first lien position above all other creditors and shall be the first to receive repayment of any loans received by LTV Steel. Repayments of this loan, including interest, shall be paid back to the Budget Stabilization Fund.

SECTION 32. TRANSFER FROM THE TOBACCO MASTER SETTLEMENT AGREEMENT FUND TO THE GENERAL REVENUE FUND

(A) Notwithstanding section 183.02 of the Revised Code, on or before June 30, 2002, the Director of Budget and Management may transfer up to \$120,000,000 from the Tobacco Master Settlement Agreement Fund (Fund 087) to the General Revenue Fund.

Notwithstanding section 183.02 of the Revised Code, on or before June 30, 2003, the Director of Budget and Management may transfer up to \$120,000,000 from the Tobacco Master Settlement Agreement Fund (Fund 087) to the General Revenue Fund.

Of the tobacco revenue that is credited to the Tobacco Master Settlement Agreement Fund in fiscal year 2002 and in fiscal year 2003, the share that is determined pursuant to section 183.02 of the Revised Code to be the amount to be transferred by the Director of Budget and Management

from the Tobacco Master Settlement Agreement Fund to the Tobacco Use Prevention and Cessation Trust Fund shall be reduced by the amount that is transferred from the Tobacco Master Settlement Agreement Fund to the General Revenue Fund in accordance with this division.

(B) Notwithstanding section 183.02 of the Revised Code, on or before June 30, 2003, the Director of Budget and Management may make one or more transfers from the Tobacco Master Settlement Agreement Fund (Fund 087) to the General Revenue Fund that in total do not exceed \$20,000,000. From the tobacco revenue that is credited to the Tobacco Master Settlement Agreement Fund in fiscal years 2002 and 2003, the shares that are determined pursuant to section 183.02 of the Revised Code to be the amounts to be transferred by the Director of Budget and Management from the Tobacco Master Settlement Agreement Fund to the various trust funds shall be reduced in each fiscal year to provide the revenue for the transfers under this division in a manner to be determined in the tobacco revenue budget act for fiscal years 2003 and 2004, but such manner shall not provide for any reductions in the shares determined for the Education Facilities Trust Fund (Fund N87), Education Facilities Endowment Fund (Fund P87), Education Technology Trust Fund (Fund S87), and Biomedical Research and Technology Transfer Trust Fund (Fund M87). The Director of Budget and Management shall not make any transfers pursuant to this division until it is determined how the shares are to be reduced.

SECTION 33. APPROPRIATION REDUCTIONS

(A) General Revenue Fund appropriations made to the Ohio House of Representatives; the Ohio Senate; the Joint Committee on Agency Rule Review; and the Joint Legislative Ethics Committee are reduced by six per cent in each fiscal year of the 2001-2003 biennium, with the following exceptions:

(1) GRF appropriations made to the Legislative Service Commission are reduced by \$1,194,088 in fiscal year 2002 and by \$992,486 in fiscal year 2003.

(2) Appropriation items 035-409, National Associations, and 035-410, Legislative Information Systems, are exempt from the reductions made in this section.

(B) The General Revenue Fund appropriations made to the Judiciary/Supreme Court are reduced by \$650,000 in each fiscal year of the 2001-2003 biennium.

SECTION 34. DEPARTMENT OF EDUCATION APPROPRIATION TRANSFERS

In each year of the 2001-2003 biennium if the Superintendent of Public Instruction determines that additional funds are needed to fully fund the requirements of Am. Sub. S.B. 1 of the 124th General Assembly for assessments of student performance, the Superintendent of Public Instruction may recommend the reallocation of unspent and unencumbered appropriations within the Department of Education to the General Revenue Fund appropriation item 200-437, Student Assessment, to the Director of Budget and Management. If the Director of Budget and Management determines that such a reallocation is required, the Director of Budget and Management may transfer unspent and unencumbered funds within the Department of Education as necessary to appropriation item 200-437, Student Assessment.

SECTION 35. GRF TRANSFER TO JCARR

The Director of Budget and Management, at the request of the Director of the Legislative Service Commission, shall transfer up to \$50,000 from Legislative Service Commission GRF appropriation item 035-410, Legislative Information Systems, to Joint Committee on Agency Rule Review GRF appropriation item 029-321, Operating Expenses.

SECTION 36. CONDITIONAL TRANSFER TO THE LOTTERY PROFITS EDUCATION FUND GROUP

Upon approval by the Governor and the Director of the Ohio Lottery to join a multijurisdictional lottery:

(1) The State Lottery Commission shall transfer a minimum of \$662,722,600 in fiscal year 2003 to the Lottery Profit Education Fund Group, and

(2) The Director of Budget and Management shall increase the fiscal year 2003 appropriation authority in the Department of Education Lottery Profit Education Fund (017) ALI 200-612, Base Cost Funding, by \$41,000,000. This amount is hereby appropriated. The Director of Budget and Management shall also decrease the fiscal year 2003 appropriation authority in the Department of Education GRF ALI 200-501, Base Cost Funding, by \$41,000,000.

SECTION 37. The General Assembly encourages and supports the Administrator of Workers' Compensation, notwithstanding sections 4123.35

and 4123.40 of the Revised Code, to apply a seventy-five per cent reduction of future premium pursuant to section 4123.32 of the Revised Code for private state fund employers, and public employer taxing district employers, for the period when employer premiums are next due.

SECTION 38. (A) As used in this section:

(1) "IEP" has the same meaning as defined in section 3323.01 of the Revised Code.

(2) "SBH student" means a student receiving special education and related services for severe behavior handicap conditions pursuant to an IEP.

(B) This section applies only to a community school established under Chapter 3314. of the Revised Code that in fiscal year 2001 enrolled, and in each of fiscal years 2002 and 2003 enrolls, a number of SBH students equal to at least fifty per cent of the total number of students enrolled in the school in the applicable fiscal year.

(C) In addition to any payments made under section 3314.08 of the Revised Code, in each of fiscal years 2002 and 2003 the Department of Education shall pay to a community school a subsidy equal to the amount of the difference when the aggregate amount calculated and paid to the school under division (D)(2) of section 3314.08 of the Revised Code for SBH students is subtracted from the aggregate amount calculated and paid to the school for such students under that division in fiscal year 2001. If the difference is a negative number, the amount of the subsidy shall be zero. If the school enrolls in either fiscal year fewer SBH students than it did in fiscal year 2001, any subsidy paid under this section shall be proportionately reduced.

(D) The amount of any subsidy paid to a community school under this section shall not be deducted from any moneys calculated under Chapter 3317. of the Revised Code for payment to a school district in which any of its students are entitled to attend school under section 3313.64 or 3313.65 of the Revised Code.

SECTION 39. There is hereby created a committee to study the impact of gambling. The committee shall consist of eight members, one of whom shall be the Director of the State Lottery Commission. The Governor shall appoint three members. The Speaker of the House of Representatives shall appoint two members of the House to the committee, one each from the majority and minority parties. The President of the Senate shall appoint two members of the Senate to the committee, one each from the majority and

minority parties. The Governor shall appoint the chairperson of the committee from among the Governor's appointees.

The committee shall issue a report to the General Assembly by June 30, 2002. Upon issuing its report, the committee shall cease to exist.

SECTION 40. The amendment or enactment by this act of sections 5739.01, 5739.012, 5741.01, and 5741.011 of the Revised Code apply only to leases entered into on or after February 1, 2002. The amendments or enactments do not apply to the extension of a lease entered into before that date; the tax shall be calculated and collected by the vendor on each payment made by the lessee under such an extension.

The amendment by this act of section 5725.14 of the Revised Code applies to the tax levied under section 5707.03 of the Revised Code in and for 2003 and thereafter.

SECTION 41. Any person who is entitled to additional payments provided under division (B) or (C) of section 5923.05 of the Revised Code, as amended by this act, shall receive the payments based upon the later of October 1, 2001, or the date the person's leave of absence began due to being ordered to perform duty by the governor as specified in the applicable division. If the person was ordered to perform duty before the effective date of this act and that person is entitled to additional benefits under either of those divisions, as amended by this act, the person's employing entity shall pay, in a lump sum, the person the additional amount due.

SECTION 42. In calculating and making payments to community schools for special education catastrophic costs under division (E) (1) of section 3314.08 of the Revised Code, the Department of Education shall utilize the law in effect for the fiscal year in which the costs of serving the students were incurred and not the law in effect for the fiscal year in which the costs were reported to and paid by the Department.

(A) As used in this section:

(1) "Provider" means a person or government entity that provides Medicaid-funded services to an individual with mental retardation or other developmental disability pursuant to a service contract.

(2) "Service contract" means a contract between a county board of mental retardation and developmental disabilities and a provider under which the provider is to provide Medicaid-funded services to an individual

with mental retardation or other developmental disability.

(B) To the extent a service contract entered into between a county board of mental retardation and developmental disabilities and a provider prior to June 6, 2001, is inconsistent with state or federal law, the county board and provider shall revise the service contract to make it comply with the procedural requirements of section 5126.035 of the Revised Code. The service contract shall be revised not later than July 1, 2002. In revising a service contract, no county board or provider shall deny an individual eligible for Medicaid-funded services the opportunity to choose a willing and qualified provider with a Medicaid provider agreement.

The amendment by this act of section 5709.40 of the Revised Code adding division (H) to that section, of section 5709.73 of the Revised Code adding division (H) to that section, and of section 5709.73 of the Revised Code adding division (G) to that section, clarifies the intent of the General Assembly in enacting those sections and is not intended as a substantive change to those sections.

(A) Section 1309.401 (1309.528) of the Revised Code is presented in this act as a composite of the section as amended by Am. Sub. H.B. 94 and as amended and renumbered by Am. Sub. S.B. 74, both of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

(B) Section 41 of Am. Sub. H.B. 94 of the 124th General Assembly is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 3 and Am. Sub. H.B. 299 of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

SECTION 43. Except as otherwise specifically provided in this act, the codified and uncodified sections of law amended, enacted, or repealed by this act, and the items of law of which such sections are composed, are not subject to the referendum. Therefore, under Ohio Constitution, Article II, Section 1d and section 1.471 of the Revised Code, the sections as amended, enacted, or repealed by this act, and the items of law of which such sections are composed, are entitled to go into immediate effect when this act

becomes law.

SECTION 44. Sections 317.33, 3313.37, 3313.375, 3770.02, 3770.03, 3770.06, 5111.34, and 5725.14 of the Revised Code as amended by this act, and the items of law of which such sections as amended by this act are composed, are subject to the referendum. Therefore, under Ohio Constitution, Article II, Section 1c and section 1.471 of the Revised Code, such sections as amended by this act, and the items of law of which such sections as amended by this act are composed, take effect on the ninety-first day after this act is filed with the Secretary of State. If, however, a referendum petition is filed against any such section as amended by this act, or against any item of law of which any such section as amended by this act is composed, the section as amended by this act, or item of law, unless rejected at the referendum, takes effect at the earliest time permitted by law.

SECTION 45. Section 11 of Am. Sub. S.B. 50 of the 121st General Assembly as amended by this act, and the items of law of which such Section as amended by this act are composed, are subject to the referendum. Therefore, under Ohio Constitution, Article II, Section 1c and section 1.471 of the Revised Code, such Section as amended by this act, and the items of law of which such Section as amended by thhis act are composed, take effect on the ninety-first day after this act is filed with the Secretary of State. If, however, a referendum petition is filed against such Section as amended by this act, or against any item of law of which such Section as amended by this act is composed, the Section as amended by this act, or item of law, unless rejected at the referendum, takes effect at the earliest time permitted by law.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____